

13 AUGUST 1947

I N D E X
of
EXHIBITS

<u>Doc. No.</u>	<u>Def. No.</u>	<u>Pros. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
1500-P-2	2860		Excerpt of Exhibit No. 32 of the Joint Committee on the Investigation of the Pearl Harbour Attack, Congress of the U.S., 79th Congress, First Session - Messages Between War Department and Hawaii from 8 July to 7 September, 1941		25620
1500-Q-2	2861		Excerpt of Exhibit No. 32 of the Joint Committee on the Investigation of the Pearl Harbour Attack, Congress of the U.S., 79th Congress, First Session - Secret Message dated 27 November 1941 from General Marshall to General Short in Hawaii		25621
1500-Q-2	2862		Excerpt from Exhibit No. 32 of the Joint Committee on the Investigation of the Pearl Harbour Attack, Congress of the U.S., 79th Congress, First Session - Dispatch from General Marshall to General MacArthur in the Philippines, dated 27 November 1941		25622

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(cont'd)

Doc. <u>No.</u>	Def. <u>No.</u>	Pros. <u>No.</u>	Description	For <u>Ident.</u>	In <u>Evidence</u>
1500-U-4	2863		Excerpt of Exhibit No. 45 of the Joint Committee on the Investigation of the Pearl Harbour Attack, Congress of the U.S., 79th Congress, First Session - Memorandum for the Chief of Staff from Brigadier-General Gerow, dated 27 November 1941		25624
1500-W-3	2864		Excerpt of Exhibit No. 37 of the Joint Committee on the Investigation of the Pearl Harbour Attack, Congress of the U.S., 79th Congress, First Session - Top Secret Dispatch from the Office of Naval Operations to Commanders in the Pacific re Sabotage due to critical negotiations with Japan, dated 8 November 1941		25631
			<u>MORNING RECESS</u>		25645
			<u>NOON RECESS</u>		25668
1500-V-5	2865		Excerpts from Pearl Harbour Attack, U.S. Government Printing Office, Washington, 1946 - Memoirs of Prince KONOYE		25670

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1500-Z-5	2866		Further excerpt from the Memoirs of Prince KONOYE - The Progress of Japanese-American Negotiations During the Time of the 2nd and 3rd KONOYE Cabinets - March 1942		25672
1400-A-6	2867		Excerpt from "Foreign Relations of the U.S. Japan: 1931-1941" Vol II - Memorandum by the Secretary of State, Washington, 8 March 1941		25676
1400-B-6	2868		Excerpt from "Foreign Relations of the U.S. Japan: 1931-1941" Vol II - Memorandum by the Secretary of State, Washington, 14 March 1941		25678
1400-C-6	2869		Excerpt from "Foreign Relations of the U.S. Japan: 1931-1941" Vol II - Memorandum by the Secretary of State, Washington, 14 April 1941		25681
1400-A-1	2870		Note, dated 17 April 1941, from Ambassador NOMURA to Prince KONOYE		25683
1401-B-1	2871		Note, dated 18 April 1941, from Ambassador NOMURA to Prince KONOYE		25685

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Doc. <u>No.</u>	Def. Pros. <u>No.</u>	Description	For <u>Ident.</u>	In <u>Evidence</u>
1400-C-1	2872	Note, dated 8 May 1941, from Ambassador NOMURA to MATSUOKA	25701	
		<u>AFTERNOON RECESS</u>	25711	
1400-D-6	2873	Excerpt from "Foreign Relations of the U.S. Japan:1931-1941" Vol II - Memorandum of a Conversa- tion Between Secretary Hull and Ambassador NOMURA on 16 May 1941	25712	
1400-E-6	2874	Excerpt from "Foreign Relations of the U.S. Japan:1931-1941" Vol II - Informal and Unofficial Oral Statement handed by Secretary of State to the Japanese Ambassador NOMURA 16 May 1941	25715	
1400-F-6	2875	Excerpt from "Foreign Relations of the U.S. Japan:1931-1941" Vol II - Memorandum of a Conversa- tion Between Secretary Hull and the Japanese Ambassador on 20 May 1941	25720	
1967	2876	Excerpt from book entitled "Peace and War U. S. Foreign Policy 1931-1941" published by the U. S. Government Printing Office, Washington, 1943 - Radio Address Delivered by President Roosevelt from Washington 27 May 1941	25722	

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EXHIBITS

(cont'd)

<u>Doc. No.</u>	<u>Def. No.</u>	<u>Pros. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
1500-W-5	2877		Excerpts from Pearl Harbour Attack - Memoirs of Prince KONOYE, Vol. 20	25726	
1400-I-6	2878		Excerpt from "Foreign Relations of the U.S. Japan: 1931-1941" Vol II - Memorandum of a Conversation Between Mr. Hamilton and others for the U.S. and Mr. WIKAWA and others for Japan on 2 July 1941	25729	
1400-J-6	2879		Excerpt from "Foreign Relations of the U.S. Japan: 1931-1941" Vol II - Memorandum of a Conversation Between Ambassador NOMURA and State Department Officials on 5 July 1941	25731	
1400-A-8	2880		Excerpt from "Foreign Relations of the U.S. Japan: 1931-1941" Vol II - Memorandum of a Conversation Between Japanese and American Diplomats in Washington on 2 July 1941	25738	
1400-H-6	2881		Excerpt from "Foreign Relations of the U.S. Japan: 1931-1941" Vol II - Memorandum of a Conversation Between the Assistants of the Secretary of State and the Japanese Ambassador on 17 June 1941	25740	

Wednesday, 13 August 1947

INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0930.

Appearances:

For the Tribunal, all Members sitting, with
the exception of: HONORABLE JUSTICE STUART McDougall,
Member from the Dominion of Canada and HONORABLE
JUSTICE I. M. ZARAYANOV, Member from the USSR., not
sitting from 0930 to 1600.

For the Prosecution, same as before.

For the Defense Section, same as before.

(English to Japanese and Japanese
to English interpretation was made by the
Language Section, IMTNE.)

MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now in session.

THE PRESIDENT: Major Moore.

LANGUAGE ARBITER (Major Moore): If the
Tribunal please, we submit the following language
corrections:

Exhibit 1961, record page 14,425, line 17,
delete from "make" to "non-commissioned officers" and
substitute "have them."

Line 21, delete the sentence beginning "You
are" and substitute "Therefore, it is desired that
proper direction be given accordingly."

THE PRESIDENT: Mr. Logan, have you cleared
up to whom the last document was addressed?

MR. LOGAN: That was addressed to the Command-
ing General, Western Defense Command, San Francisco,
California.

I might say there are practically identical
messages which we will offer also addressed to the Far
East Command in Manila and the Commanding General,
Hawaiian Department.

That first one, the one under consideration,
may be addressed to the entire Western Defense Command,
and that might just be an A.P.O. number, San Francisco;
I don't know.

1 THE PRESIDENT: Well, that is all you know
2 about it?

3 MR. LOGAN: This third document from there shows
4 the same radiogram was sent to the Caribbean Defense
5 Command in the Canal Zone.

6 THE PRESIDENT: By a majority the Court
7 overrules the objection and admits the document.

8 CLERK OF THE COURT: Defense document
9 1500-P-2 will receive exhibit No. 2860.

10 (Whereupon, the document above
11 referred to was marked defense exhibit
12 No. 2860 and received in evidence.)

13 MR. LOGAN: I shall read exhibit 2860.

14 "27 November 1941 from Marshal to Western
15 Defense Command. Subject: Warning. Priority.

16 "Commanding General, Western Defense Command,
17 Presidio of San Francisco, California.

18 "Negotiations with Japan appear to be termi-
19 nated to all practical purposes with only the barest
20 possibilities that the Japanese Government might come
21 back and offer to continue period Japanese future
22 action unpredictable but hostile action possible at
23 any moment period If hostilities cannot repeat cannot
24 be avoided the United States desires that Japan commit
25 the first overt act period This policy should not

1 repeat not be construed as restricting you to a course
2 of action that might jeopardize your defense period
3 Prior to hostile Japanese action you are directed to
4 undertake such reconnaissance and other measures as
5 you deem necessary but these measures should be carried
6 out so as not repeat not to alarm civil population or
7 disclose intent period Report measures taken period
8 A separate message is being sent to G dash two Ninth
9 Corps Area re subversive activities in United States
10 period Should hostilities occur you will carry out
11 the tasks assigned in rainbow five so far as they
12 pertain to Japan period Limit dissemination of this
13 highly secret information to minimum essential officers.

14 "Marshall."

15 Defense document 1500-0-2 is a secret message
16 dated 27 November 1941 from General Marshall to
17 General Short in Hawaii containing the same information
18 as stated in the previous document, 1500-P-2,
19 exhibit 2860. As the messages are practically
20 identical, I shall not read this document.

21 THE PRESIDENT: Admitted.

22 CLERK OF THE COURT: Defense document
23 1500-0-2 will receive exhibit No. 2861.
24

25 (Whereupon, the document above
referred to was marked defense exhibit

1 No. 2861 and received in evidence.)

2 MR. LOGAN: We offer in evidence defense
3 document 1500-Q-2, which is a dispatch from General
4 Marshal to General MacArthur in the Philippines,
5 dated 27 November 1941, revealing that the army
6 realized that negotiations between Japan and the
7 United States at that time were impossible and that
8 hostile action was possible at any moment.
9

10 As this contains the same information as is
11 contained in exhibit 2860 and 2861, I shall not read
12 that, either.

13 THE PRESIDENT: Admitted.

14 CLERK OF THE COURT: Defense document
15 No. 1500-Q-2 will receive exhibit No. 2862.

16 (Whereupon, the document above
17 referred to was marked defense exhibit
18 No. 2862 and received in evidence.)

19 MR. LOGAN: Defense document 1500-U-4 is a
20 memorandum for the Chief of Staff from Brigadier
21 General Gerow dated November 27, 1941, in which it
22 is revealed that the American authorities recognized
23 there was little hope for continuation of negotiations
24 at this time and that the Secretary of War did not wish
25 that the President be advised to request Japan to
reopen conversations. We offer this document in

1 evidence.

2 THE PRESIDENT: Mr. Tavenner.

3 MR. TAVENNER: If the Tribunal please, this
4 document is open to the same objections formerly made
5 to the 1500 series documents; and in addition, the
6 point that has just been covered by the preceding
7 documents which were admitted with regard to the pos-
8 sible termination of negotiations is purely repetitive
9 and should be excluded.

10 MR. LOGAN: We submit, if the Tribunal please,
11 that this document is not apocryphal. It shows the
12 unyielding attitude of the American military at that
13 time. It is further evidence that both the military
14 of the United States and Japan realized that further
15 negotiations promised nothing. It sheds light on the
16 reason for the decision of Japan of December 1, 1941,
17 and it contains statements of the highest United States
18 governmental and military authorities and it is very
19 closely associated with the diplomatic phase which will
20 be presented shortly.

21 I might say that this is an official document
22 from the Pearl Harbor Attack.

23 THE PRESIDENT: Of course, we do not overlook
24 the fact that the purpose of the Pearl Harbor inquiry
25 was to fix the responsibility of the different American

1 army and navy chiefs concerned. However, some of the
2 evidence may have a bearing more or less doubtful.

3 We will give you the benefit of that doubt
4 and admit the document on the usual terms. We over-
5 rule the objection.

6 CLERK OF THE COURT: Defense document
7 1500-U-4 will receive exhibit No. 2863.

8 (Whereupon, the document above
9 referred to was marked defense exhibit
10 No. 2863 and received in evidence.)

11 MR. LOGAN: I shall read exhibit 2863.

12 Communication dated November 27, 1941.

13 "(Stamped notation:) November 28, 1941.

14 Noted -- Chief of Staff. Noted -- Deputy Chief of Staff.
15 "Memorandum for the Chief of Staff. Subject:
16 Far Eastern Situation.

17 "1. The Secretary of War sent for me about
18 9:30 a.m., November 27, 1941. General Bryden was
19 present. The Secretary wanted to know what warning
20 messages have been sent to General MacArthur and what
21 were proposed. I gave him a copy of the Joint Army and
22 Navy message sent November 24. I then showed him a
23 copy of the draft message you discussed at the Joint
24 Board meeting. He told me he had telephoned both
25 Mr. Hull and the President this morning. Mr. Hull

1 stated the conversations had been terminated with the
2 barest possibility of resumption. The President wanted
3 a warning message sent to the Philippines. I told
4 him I would consult Admiral Stark and prepare an
5 appropriate cablegram.

6 "2. Later in the morning, I attended a
7 conference with the Secretary of War, Secretary of
8 Navy, and Admiral Stark. The various messages to the
9 Army and Navy Commanders and to Mr. Sayre were dis-
10 cussed. A joint message for General MacArthur and
11 Admiral Hart was approved (copy attached). The
12 Secretaries were informed of the proposed memorandum
13 you and Admiral Stark directed be prepared for the
14 President. The Secretary of War wanted to be sure that
15 the memorandum would not be construed as a recomenda-
16 tion to the President that he request Japan to reopen
17 the conversations. He was reassured on that point.
18 It was agreed that the memorandum would be shown to both
19 Secretaries before dispatch.

20 "3. Both the message and the memorandum were
21 shown to the Secretary of War. He suggested some
22 minor changes in the memorandum. These were made (copy
23 attached).

24 "(Signed) L. T. Gerow, Brigadier General,
25 Acting Assistant Chief of Staff."

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1 THE PRESIDENT: The decision to admit this
2 document was a majority decision.
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1 MR. LOGAN: Defense document 1500-V-3 is a top
2 secret dispatch of November 27, 1941, from the Office of
3 Naval Operations to commanders in the Pacific warning
4 against sabotage due to the critical status of nego-
5 tiations with Japan. This is offered in evidence.

6 THE PRESIDENT: Mr. Tavenner.

7 MR. TAVERNER: If the Tribunal please, this
8 is merely an order directing that commanders of a
9 particular area take appropriate measures for security.
10 The next two documents are quite similar. These
11 matters are quite irrelevant to any issues involved
12 here and are subject to all the objections made to
13 the 1500 series documents, and the same objection is
14 now made.

15 MR. LOGAN: This document, if the Tribunal
16 please, shows the attitude of the military the day
17 after Mr. Hull's memorandum of November 26 had been
18 sent and the realization as to the effect of that note.

19 THE PRESIDENT: By a majority the court sustains
20 the objection and rejects the document.

21 MR. LOGAN: Defense document 1500-U-3 is
22 offered in evidence. This is a top secret message
23 dated 27 November 1941 from Chief of Naval Operations
24 to commanders in the Pacific and warns of impending
25 war, stating that negotiations with Japan have ceased

1 and that an aggressive move is expected within the
2 next few days.

3 THE PRESIDENT: Mr. Tavenner.

4 MR. TAVENNER: The same objection, if the
5 Tribunal please.

6 THE PRESIDENT: This seems to be of the
7 same character as the previous document.

8 MR. LOGAN: In addition to my argument in
9 support of the last document, I wish to add that it
10 shows that the military were prepared to proceed
11 with the war plan WPL 46. It also shows that the
12 dispatch was to be considered a war warning.

13 THE PRESIDENT: By a majority the Court
14 sustains the objection and rejects the document.

15 MR. LOGAN: Defense document 1500-R-2 is
16 offered in evidence. This is a secret dispatch
17 dated 27 November 1941 from Army Intelligence in
18 Washington to Army Intelligence Hawaii, revealing
19 that negotiations with Japan were such that hos-
20 tilities might come at any moment.

21 THE PRESIDENT: Mr. Tavenner.

22 MR. TAVENNER: If the Tribunal please,
23 this is an identical document, and the same objection
24 is made.

25 MR. LOGAN: This further shows that the

1 highest military authorities of the United States
2 recognized the effect of Secretary Hull's message of
3 November 26, 1941.

4 THE PRESIDENT: It is in the same position
5 as the other documents.

6 MR. LOGAN: It also explains that the
7 Japanese military viewed it in the same light as the
8 American military.

9 THE PRESIDENT: The objection is sustained
10 and the document rejected by a majority.

11 MR. LOGAN: Defense document 1500-V-2 is
12 offered in evidence. This is a secret message from
13 the Western Defense Command to General Marshall, Chief
14 of Staff, replying to his alert of November 28, 1941,
15 and stating that they were ready to carry out the
16 prepared tasks assigned in Rainbow 5 in the event of
17 hostilities with Japan.

18 THE PRESIDENT: Mr. Tavenner.

19 MR. TAVENNER: If the Tribunal please, this
20 is a reply to a telegram which has just been rejected
21 in evidence. It is immaterial and irrelevant to any
22 issue in the case, and for the reasons assigned in
23 connection with the 1500 series documents.
24 objection is renewed.

25 MR. LOGAN: We will offer in a few minutes,

1 if the Tribunal please, an exposition of these
2 various army plans, and this shows that steps were
3 being taken at this time to put them into effect on
4 November 28, 1941. They have a direct bearing on
5 the question which will be for the determination of
6 the Court as to whether or not this was an aggressive
7 war.

8 THE PRESIDENT: We understand that you are
9 tendering these to combat the charge of a treacherous
10 attack.

11 MR. LOGAN: That is one of the minor issues,
12 reasons, which I am attacking, not one of the major
13 ones.

14 THE PRESIDENT: By a majority the Court
15 sustains the objection and rejects the document.

16 MR. LOGAN: I shall omit defense document
17 1500-U-2.

18 I shall omit defense document 1500-S-2 as
19 cumulative, showing America was ready for hostilities
20 following the

21 I shall omit defense document 1500-T-2 on
22 the same ground.

23 We offer in evidence defense document 1500-W-
24 3. This is a top secret dispatch dated November 28,
25 1941, from Chief of Naval Operations to commanders

in the field advising that hostile action with
1 Japan is possible at any moment and that the United
2 States desires that Japan commit the first overt act.
3 The previous exhibits we offered contained practi-
4 cally the same information as this with respect to
5 the army. This one was with respect to a navy
6 message. I shall not read it, as the message is
7 identical with the previous ones admitted.

8 THE PRESIDENT: Mr. Tavenner.

9 MR. TAVENNER: If the Tribunal please, the
10 similar documents were admitted regarding messages
11 from the army; so I will not raise the same objec-
12 tions again. But inasmuch as this document has not
13 been read to the Tribunal I do want to read this
14 statement that is contained in it: "Undertake no
15 offensive action until Japan has committed an overt
16 act."

17 THE PRESIDENT: Admitted.

18 CLERK OF THE COURT: Defense document
19 1500-W-3 will receive exhibit No. 2864.

20 (Whereupon, the document above
21 referred to was marked defense exhibit
22 No. 2864 and received in evidence.)

23 MR. LOGAN: Defense document 1500-M-3 is
24 offered in evidence. This is an excerpt from Military

1 Intelligence Estimate prepared by G-2, War Department
2 in Washington, D. C., dated November 29, 1941, in
3 which is revealed the extent of collaboration between
4 the British and the United States, together with
5 the Netherlands East Indies.

6 THE PRESIDENT: Mr. Tavenner.

7 MR. TAVENNER: This document, if the Tribunal
8 please, is on all fours with a number of other docu-
9 ments of the 1500 series which have been rejected.
10 Objection is made to its introduction on the same
11 grounds as previously stated.

12 MR. LOGAN: This document dated November 29,
13 1941 shows definitely what was done by the United
14 States, Netherlands East Indies, and Great Britain
15 in preparation for the war. It will be shown that
16 the actions of the ABCD Powers were known to Japan and
17 Japan's reaction or counteraction thereto is pertinent
18 to meet the issue of aggressive war and conspiracy.
19 If the action by Japan was without provocation then
20 the charge of aggressive war and conspiracy might be
21 maintainable. But if there was provocation and the acts
22 by Japan were in reply thereto as self-defense, then
23 this is in answer to those charges. I might state that
24 these are statements of fact contained in this document.

25 THE PRESIDENT: By a majority the objection is
 sustained and the document rejected.

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1 MR. LOGAN: We offer in evidence defense
2 document 1500-O-5, being an extract from the testimony
3 of General Marshall before the Congressional Committee
4 in which is discussed the furnishing of material to
5 Borneo, Port Moresby, etc. in conjunction with preventing
6 the Japanese from obtaining oil in that area prior to
7 December 7, 1941.

8 THE PRESIDENT: Mr. Tavenner.

9 MR. TAVENNER: If the Tribunal please, the
10 prosecution views this document as irrelevant and
11 immaterial, and it is objected to on those grounds.

12 MR. LOGAN: Of course, a general statement
13 of immateriality and irrelevancy is difficult to answer,
14 but I will answer it to this extent: This document
15 shows definite steps taken in the Pacific by the ABCD
16 Powers with respect to military preparation and
17 armaments. It talks about airstrips and military
18 materials furnished Borneo, Port Moresby and other places.
19 It is a statement made by General Marshall, the high-
20 est military man in the United States at that time. It
21 has a direct bearing on the issue of whether or not
22 these actions taken were sufficient provocation or
23 justification for Japan's action later. I can think
24 of no other evidence that would be more material.

25 THE PRESIDENT: By a majority the Court

sustains the objection and rejects the document.

1 MR. LOGAN: Defense document 1500-X-3 is
2 offered in evidence. This is a Top Secret dispatch
3 from the Office of Naval Operations to the Commander-
4 in-Chief of the United States Fleet in the Pacific
5 dated 2 December 1941 directing reconnaissance measures
6 to be taken against the Japanese on direct order of
7 the President of the United States.
8

THE PRESIDENT: Mr. Tavenner.

9 MR. TAVENNER: If the Tribunal please, the
10 matters set forth in this document could not be
11 relevant and material to the issues in this case. Every
12 country had its system of reconnaissance and its
13 method of obtaining information. Whether or not this
14 plan of reconnaissance was ever carried out is not
15 disclosed. The fact that this plan was mentioned during
16 the course of the Pearl Harbor Inquiry could not have
17 had any influence upon the subsequent actions of Japan
18 and could not constitute a justification for Japan's
19 action.
20

21 MR. LOGAN: This document shows further
22 preparations for war by the United States, the realization
23 of the situation that existed at that time, and it was
24 a break-down of the negotiations in diplomatic circles.
25 It shows further preparations by the United States,

knowing the situation that existed on that date.

THE PRESIDENT: Objection sustained and the document rejected by a majority.

MR. LOGAN: Defense document 1500-F-4 is offered in evidence. This is a dispatch to the Military Attaché, American Embassy in Tokyo dated December 3, 1941 and issued by General Miles advising of the early rupture of diplomatic relations and ordering the destruction of documents and codes.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If it please the Tribunal, this document has no effect other than the other documents relating to warnings which have been rejected. The same objection is made to this as to the other documents of this series.

MR. LOGAN: I might say, if the Tribunal please, that this and other evidence which I have offered tends to show how fallacious the prosecution's argument is and its contention is that Japan, while talking diplomacy, was preparing for war, when we find that was also being done by the United States.

THE PRESIDENT: It is only a precaution. It doesn't show that the United States is finally committed to war.

MR. LOGAN: I didn't say that it had, your

1 Honor. I say that this document shows that one
2 of the last steps which is usually taken when a full
3 realization is had that war is imminent is the
4 destruction of codes.

5 THE PRESIDENT: Objection sustained and the
6 document rejected by a majority.

7 MR. LOGAN: We offer in evidence defense
8 document 1500-Z-3. This is a Top Secret dispatch
9 of December 3, 1941 from the Office of Naval Operations
10 to the commanders in the Pacific advising that the
11 Japanese had ordered the destruction of their code
12 machine equipment in London, Hongkong, Singapore, Manila
13 and Batavia.

14 THE PRESIDENT: Mr. Tavenner.

15 MR. TAVENNER: If the Tribunal please, this is
16 an identical type document and the same objection is
17 made to it.

18 MR. LOGAN: It shows that the Japanese were
19 destroying their codes. The previous documents showed
20 the Americans were destroying their codes.

21 THE PRESIDENT: The objection is sustained
22 and the document rejected by a majority.

23 MR. LOGAN: Defense document 1500-N-3 is
24 offered in evidence. This is a review of the Far Eastern
25 situation as of December 5, 1941 as compiled by the

1 Military Intelligence Branch of the War Department
2 in Washington, D.C. It contains statements of fact
3 with regard to the effect of the economic embargoes,
4 lack of raw materials in Japan at that time. The
5 stoppage of trade and the freezing of credits had
6 reduced Japan's supply of raw materials and she had been
7 for some time required to use her reserves.

8 THE PRESIDENT: Mr. Tavenner.

9 MR. TAVENNER: If the Tribunal please, this
10 is a statement of opinion made on the 5th day of
11 December, 1941 by one government branch to another
12 and is open to all the objections which have hitherto
13 been made to the 1500 Series documents, and, therefore,
14 the same objections are made.

15 THE PRESIDENT: The objection is sustained and
16 the document rejected by a majority.

17 MR. LOGAN: We offer in evidence defense
18 document 1500-X-4. This is an excerpt from the testimony
19 of General Marshall in which he refers to American
20 military installations in the Pacific and is offered
21 to show that the United States had been preparing for
22 some time for eventual hostilities with the Japanese.

23 THE PRESIDENT: Mr. Tavenner.

24 MR. TAVENNER: If the Tribunal please, this
25 document is on all fours with document 1500-O-5, which

1 was rejected a few moments ago. The same objections
2 are made to the introduction of this document.

1 MR. LOGAN: I fail to see how the prosecution
2 can contend that evidence of preparations for war in
3 the Pacific by nations other than Japan are immaterial
4 to this action. They claim that this is an aggressive
5 war without any provocation. How can they possibly
6 contend that Japan, who knew about these things that
7 were going on, was not provoked by it?

8 THE PRESIDENT: They can contend Japan did
9 not need any provocation.

10 MR. LOGAN: Whether they needed it or not,
11 if the Tribunal please, we are trying to show that it
12 was there and that they were provoked as a result of
13 it. We are trying to meet the issues laid down by
14 the Chief Prosecutor under his definition of what
15 provocation is. We are showing that Japan was en-
16 circled militarily and economically in the Pacific.
17 It is up to the Tribunal to determine -- not the
18 prosecution -- as to whether or not that constituted
19 provocation.

20 Evidence has been produced by the prosecution
21 in an endeavor to convict these accused because of
22 what they did. Now, we are trying to show that they
23 had just provocation for it, and we cannot prove our
24 affirmative defense unless we can get the evidence
25 before the Tribunal as to what was being done.

1 Prosecution itself has introduced evidence
2 showing that the Japanese military were keeping the
3 home government informed of what was going on with
4 respect to armaments and establishment of outposts
5 in the Pacific. This is evidence of what the Allied
6 Powers were doing in the Pacific.

I can think of no more competent, no better evidence to present to this Tribunal than the sworn testimony of General Marshall before the Congressional Investigation Committee.

THE PRESIDENT: It is not his position that
matters; it is what he says.

MR. LOGAN: I have offered it solely for what he says, if the Tribunal please.

15 THE PRESIDENT: This seems to be based on
16 the assumption that Japan will make war and is not
17 itself a preparation for war independently of that.

19 MR. LOGAN: America may have known that, if
20 the Tribunal please, but we have to accept the facts
21 as they existed. Prosecution claims that everything
22 that the Japanese did was **aggression**. We want to
23 show from the facts what the Allied Powers did and
24 what did the Japanese think about those actions;
25 and only after ascertaining all the facts will the
Tribunal be in a position to determine whether or no

1 there was provocation.

2 THE PRESIDENT: Self-defense.

3 The document is rejected and the objection
4 sustained by a majority.

5 MR. LOGAN: We next offer in evidence
6 defense documents 1500-L-4 and 1500-K-4, which con-
7 tain a general discussion of American war plans and
8 procedures prior to the Pearl Harbor attack. This
9 is a document I referred to previously as explaining
10 the various war plans, "Rainbow, W.L.P.," and so
11 forth. This is taken from the testimony of Lieutenant
12 General Leonard T. Gerow before the Congressional
13 Investigation Committee.

14 THE PRESIDENT: Mr. Tavenner.

15 MR. TAVENNER: If the Tribunal please, the
16 Tribunal has rejected quite a few documents which set
17 forth, in this section, plans for defensive war. The
18 effort to again introduce in evidence war plans for a
19 defensive war, we think, should be rejected on the
20 grounds that have been so frequently stated.

21 MR. LOGAN: Well, this document sets forth
22 the resume of all the various plans and has a direct
23 bearing on the question of whether or not the United
24 States prepared for war in the Pacific at that time,
25 just what her objectives were, based on assumptions.

1 THE PRESIDENT: This seems to be covered by
2 earlier rulings.

3 The objection is sustained and the documents
4 rejected by a majority.

5 MR. LOGAN: We offer in evidence defense
6 document 1500-N-4, which is an excerpt from the
7 testimony of Admiral Richard Kelly Turner and is a
8 discussion of an American war plan directed against
9 Japan prior to December 7, 1941.

10 THE PRESIDENT: Mr. Tavenner.

11 MR. TAVENNER: The same objection, if the
12 Tribunal please.

13 MR. LOGAN: I have nothing further to add,
14 your Honor.

15 THE PRESIDENT: The objection is sustained
16 and the document rejected by a majority.

17 MR. LOGAN: We withdraw defense document
18 1500-W-2.

19 We offer in evidence defense document
20 1500-B-5, which is an excerpt from the testimony of
21 General Marshall before the Congressional Investigat-
22 ing Committee with respect to United States aid to
23 China prior to Pearl Harbor. This is also offered as
24 having an extremely direct bearing on the question of
25 provocation.

THE PRESIDENT: Mr. Tavenner.

1 MR. TAVENNER: If the Tribunal please, this
2 is another of the 1500 series documents to which the
3 same objections previously made are now made.
4

5 THE PRESIDENT: Similar material was re-
6 jected yesterday.

7 The objection is sustained and the document
8 rejected by a majority.

9 MR. LOGAN: We now offer in evidence
10 defense document 1500-P-5, which is an excerpt
11 from the testimony of General George C. Marshall,
12 the highest ranking United States military official,
13 before the Congressional Committee on December 10,
14 1945, showing aid to the Chinese Government and ship-
15 ment of materials to South Pacific Islands before
16 December 7, 1941.

17 THE PRESIDENT: Mr. Tavenner.

18 MR. TAVENNER: If the Tribunal please, the
19 prosecution contends that there is nothing in this
20 document which is not covered by the previous rulings
21 with regard to the 1500 series documents, and the
22 same objection is made as heretofore made.
23

24 MR. LOGAN: This document goes a little
25 further than the others, your Honor. It shows that
preparations for war, what actions were taken, were

1 known to the Japanese with respect to the arrangement
2 made at Rabaul, Port Moresby, Port Darwin, Balikpapan,
3 Borneo, and Singapore. It has a direct bearing.

4 Again, I must say that I fail to see how the
5 prosecution could seriously contend that this is not
6 material to the issue raised by them as to whether or
7 not this was an unprovoked war.

8 THE PRESIDENT: Suppose Australia made those
9 strips and those parts in her own territory, we would
10 hardly be asked to take it into consideration.

11 MR. LOGAN: But, that is not the case before
12 us, your Honor. Here is an action that was taken
13 thousands and thousands of miles, close to Japan.
14 If Japan had done that, it probably would have been
15 considered by the prosecution as an act of aggressive
16 war.

17 THE PRESIDENT: I understand from my col-
18 league, who examined this carefully while I was dis-
19 cussing it with you, that the first part relates to
20 Lease-Lend and the second part covers material already
21 rejected.

22 The objection is sustained and the document
23 rejected by a majority.

24 We will recess for fifteen minutes.

25 (Whereupon, at 1045, a recess was

25,645

1 taken until 1100, after which the proceed-
2 ings were resumed as follows:
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CLERK OF THE COURT: The International Military Tribunal for the Far East is now resumed.

MR. LOGAN: We now offer in evidence defense document 1500-R-5, which is a memorandum for Admiral Stark from General George C. Marshall, Chief of Staff, dated September 12, 1941, regarding military aid for islands in the South Seas prior to Pearl Harbor.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please --

MR. LOGAN: I might say that the previous documents showing troop movements, and so forth, have been introduced and accepted by the Tribunal.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, the prosecution views the transfer of troops to the Philippines as not being material and objects on that ground.

THE PRESIDENT: Purely defensive.

By a majority the objection is sustained and the document rejected.

MR. LOGAN: I didn't have an opportunity to answer. I might say there is nothing in this document to show whether it is offensive or defensive.

THE PRESIDENT: It is too late now, Mr. Logan.

1 MR. LOGAN: I beg pardon. I didn't hear
2 your Honor's remark.

3 THE PRESIDENT: It is too late now. We have
4 all read the document.

5 MR. LOGAN: I was going to offer defense docu-
6 ment 1500-B-2, but I shan't.

7 THE PRESIDENT: That is withdrawn.

8 MR. LOGAN: Mr. Blakeney will now proceed
9 with the presentation of evidence on the diplomatic
10 sub-division of the Pacific War.

11 THE PRESIDENT: Major Blakeney.

12 MR. BLAKENEY: I now open the sub-division
13 of the case, which, for convenience, we have nominated
14 the Diplomatic Section.

15 The Tribunal having had presented to it the
16 evidence of Japan's internal conditions, and of the
17 course of Far Eastern history during the decade pre-
18 ceding the fateful year 1941, we now come to grips
19 with what may well be called the most momentous events
20 of modern history--the straining and final breaking
21 of relations between Japan and the other great Pacific
22 powers, the United States, the British Empire, and the
23 Netherlands. We have now by seeking for the truth in
24 connection with these events, by attempting to disclose
25 fully why and how war came, to assist the Tribunal in

1 determining whether these twenty-five men in the
2 dock have earned a stigma of guilt for bringing or
3 conspiring to bring that war about as a war of
4 aggression.

5 The Tribunal has already received evidence
6 explanatory of some aspects of the unique and complex
7 Japanese governmental and political system--not the
8 least recondite point of which is, from the Occidental
9 point of view, the interrelation between the civil
10 and the military authority. To assist the Tribunal in
11 understanding what is to follow and in correctly deter-
12 mining what men were responsible for the decisions--
13 be they criminal or justifiable--which led to the clash
14 of arms here under investigation, we shall offer addi-
15 tional evidence in clarification of the respective
16 prerogatives and powers of the civilian government and
17 the military high command. This evidence will show
18 that in the Japan of those days, in operational mili-
19 tary matters the high command--the general staffs of
20 Army and Navy--were supreme and omnipotent, having
21 power to decide without accountability to the govern-
22 ment all questions of military strategy and related
23 matters. The government had of course full authority
24 over non-military matters, and the Army and Navy
25 Ministers, as members of the government, had some authori-

1 ty over military matters, so far as those were of
2 administrative nature; but where the two spheres im-
3 pinged upon each other no action could be taken without
4 the concurrence of the high command, which was thus
5 enabled, on the plea of the necessities of national
6 defence, to exert a powerful influence on affairs of
7 state.

8 With this as a background we shall come to
9 consider the long course of negotiations between Japan
10 and the United States, acting for herself and her
11 allies, which was designed but failed to avert the war
12 which in the end came on 7 December 1941. The Tribunal
13 will be reminded that relations of Japan with the
14 United States and Britain had gradually changed for the
15 worse since the Manchuria Incident; and that beginning
16 at about the time of the abrogation of the Japanese-
17 American Commercial Treaty in July 1939 the process
18 of deterioration was much accelerated. The unabated
19 continuance of the China Affair; the abrogation of the
20 Commercial Treaty; the move into French Indo-China;
21 the Tripartite Pact--these were the mileposts of the
22 road to 1941, a year which opened with relations be-
23 tween the two countries at their worst of the century.

24 It was into this atmosphere that the new
25 Japanese Ambassador, Admiral NOMURA, was projected

when he arrived in Washington in early 1941. The
evidence will be that he arrived with instructions
to work for the betterment of relations, although
with no specific plan; but that soon after his arrival
the President and the Secretary of State of the United
States on several occasions invited him to the commence-
ment of negotiations with a view to effectuating a
general settlement of all the pending questions be-
tween the two nations. The Ambassador reported on
17 April that the American authorities had offered to
commence negotiations upon the basis of a tentative
draft of understanding, prepared by private individu-
als, Japanese and American, which they presented to
serve as a starting-point.

We shall show by the evidence of Prince
KONOЕ himself, then Premier of Japan, that upon receipt
of advice of the American proposal and draft the govern-
ment and the military high command gave the matter the
most earnest consideration, thoroughly debating the
various questions raised by the proposal, and finally
agreed that such negotiations as those proposed offered
the best prospect of establishing a peace not only in
the Pacific but throughout the world. After study of
the details, a counter-draft was accordingly made.
It being presented to the United States Government on

12 May, the negotiations based on these and later
proposals, between Ambassador NOMURA (later assisted
by Ambassador KURUSU) and the American representatives,
as well as the authorities in Tokyo, continued for over
six months.

The details of these negotiations, so far
as they are pertinent to the issues of this case,
will be shown by evidence, which however it is unneces-
sary to detail here. It may be said that in general
that evidence will be that the conversations in Wash-
ington soon narrowed the important differences between
the parties to three: the question of equal commercial
opportunity in China; the stands of the respective
nations on the extent of the right of self-defence
(including Japan's obligations under the Tripartite
Pact); the question of the stationing of Japanese
troops in and their withdrawal from China. It was
on these issues--later complicated by that raised by
the Japanese advance into Southern Indo-China--that
the negotiations continued to the end.

The evidence will be that in the almost daily
conversations held throughout May, June, and early
July between Japanese and American representatives
there was thorough discussion of every aspect of the
questions at issue. The evidence will show that des-

1 pite good will and concession in some matters on each
2 side, the parties stood by the end of September
3 approximately on the ground which they had occupied in
4 May. Meanwhile, however, there had occurred in Europe
5 an event which had a far-reaching influence in Japan
6 and in America, that of 22 June. The outbreak of the
7 Russo-German war resulted in a decision by government
8 and high command of Japan not to participate; but at
9 the same time the government had to yield to the high
10 command's insistence on moving into southern French
11 Indo-China. This advance, which took place in accord-
12 ance with the Franco-Japanese agreement of 21 July, led
13 the United
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1 States to discontinue the negotiations for a time,
2 and will be shown to have been the turning-point, the
3 point at which the United States, losing interest
4 in the negotiations, seemed to have decided that
5 war was but a matter of time. An immediate sequel
6 to the Indo-China move was the American, British
7 and Dutch freezing of Japanese assets and rupture
8 of commercial relations with Japan; but the evidence
9 will show that that move had been under contempla-
10 tion by the United States since some weeks before.
11

12 "On 16-18 July the second KONO ministry
13 resigned and the third was formed. This change of
14 government will be shown to have been directly and
15 wholly brought about by the necessities of reaching
16 an agreement with the United States -- the negotia-
17 tions were not progressing, and it was felt that a
18 change of foreign ministers was required to further
19 them. The new cabinet continued with the attempt
20 to bring about an agreement. Not only were new pro-
21 posals offered, but Premier KONO, taking up and
22 elaborating a suggestion contained in the original
23 draft proposal, urged that a meeting be held between
24 him and President Roosevelt for a tete a tete from
25 which there was every reason to expect much. To
~~this suggestion --- which the premier had been able~~

1 to make on some conditions proposed by the Army --
2 to this suggestion the American authorities at first
3 responded with some enthusiasm, but they later imposed
4 so many conditions for the meeting that it could never
5 be realized.

6 "By August the pressure of the Army author-
7 ities upon the government for a quick settlement of
8 the Japanese-American relations had become too power-
9 ful to be any longer resisted. The United States, it
10 was argued, was insincere in negotiating; she had
11 no real intention of agreeing; if Japan yielded on
12 the points at issue then, the United States would
13 impose further measures of oppression; and it was
14 useless longer to negotiate, and better to go to war
15 in defense of the nation than to yield. This position
16 was opposed by the Government, which urged that fur-
17 ther concessions could and should be made to preserve
18 peace; the Navy at this time was reluctant to see the
19 nation embarked upon a war, but entrusted the decision
20 to the premier rather than openly opposing the Army's
21 stand. At the Imperial Conference of 6 September
22 the decision was arrived at that unless a settlement
23 by diplomacy could be reached by mid-October war
24 would be resolved upon.

25 "The government redoubled its efforts;

1 Premier KONO urged anew the promise held out by the
2 meeting with the President; a new proposal, embody-
3 ing the maximum concession which could be agreed upon,
4 was presented to the United States; Foreign Minister
5 TOYADA began consultations in Tokyo with the Amer-
6 ican and British Ambassadors to insure that every
7 possible effort should be made. Despite all, the
8 negotiations did not prosper; the United States
9 remained unconciliatory and adamant and, as reported
10 by Ambassador NOMURA, seemed determined on maintain-
11 ing its stand even if it meant war. The Army renew-
12 ed its insistence that diplomacy, having little pros-
13 pect of success, must give place to arms; the oppos-
14 ing points of view could not be reconciled; and on
15 16 October the third KONO government, like its
16 predecessor, fell, a victim of the Japanese-American
17 question.

18 "The emergency of the successor cabinet,
19 that of General TOJO, was widely regarded as evidence
20 of the victory of extremist opinion in Japan. That,
21 on the contrary, the new premier was charged to and
22 did immediately upon taking office undertake reexam-
23 ination of the whole question of Japanese-American
24 relations, 'wiping the slate clean' of the Imperial
25 Conference decision of 6 September which had estab-

1 lished the limit beyond which Japan could not go
2 by way of concession toward America, will be shown
3 by the evidence to be adduced. The highest officials
4 of government and high command plunged at once into
5 a round of Liaison Conferences at which the whole
6 subject was minutely restudied with a view of find-
7 ing the utmost concessions which could be offered.
8 It having been understood from Ambassador NOMURA'S
9 reports that a basis for agreement concerning the
10 other two large questions had been obtained, the
11 Liaison Conference devoted the most of its consid-
12 eration to the problem of withdrawal of troops from
13 China, the Army's intransigence in connection with
14 which had caused the fall of the KONOЕ government
15 and had brought the negotiations in Washington to a
16 stalemate.

17 "During this period the position of the Army
18 high command remained that which it had been before:
19 that there was but a faint prospect of successful
20 conclusion of the negotiations, and that Japan would
21 therefore eventually have to go to war. But while
22 negotiations dragged out interminably, so it was
23 argued, Japan was being subjected to gradual exhaustion
24 of resources as the economic warfare of the allied
25 powers began to take full effect; the nation was

1 losing its power to fight; and hostilities should
2 therefore be commenced while Japanese fighting power
3 was still relatively strong as compared with that of
4 the potential enemy. The viewpoint of the Naval
5 General Staff had come to be that if war was to be
6 inevitable, it should be determined upon promptly.
7 But the result was that agreement of the high command
8 was secured to offer further concessions and to con-
9 tinue diplomatic efforts; but with the provisos
10 that precautionary military preparations should go
11 on simultaneously, and that if diplomacy failed to
12 achieve results, a resolution for war should be taken.

13 "The evidence will be that at the Liaison
14 Conference of 1-2 November agreement was reached
15 upon the presentation to the United States, in
16 obedience to the policy so established, of two alter-
17 native proposals: one in general form, embodying such
18 points of understanding as had theretofore been reach-
19 ed, together with the new concessions: the other in
20 form of a modus vivendi, to be offered, in the event
21 of American unreceptiveness to the general proposal,
22 as a means of relaxing the tension to create a favor-
23 able atmosphere for continuance of negotiations.
24 These proposals were approved at an Imperial Confer-
25 ence on 5 November, and Ambassador NOMURA was immed-

1 iately instructed to commence negotiations on that
2 basis. Ambassador KURUSU was dispatched at the same
3 time, in accordance with a long-standing request of
4 Ambassador NOMURA, to assist.

5 "The first of these proposals -- "Proposal
6 'A'", as it was designated -- was duly presented to
7 Secretary Hull and the President. At first, the evid-
8 ence will show, prospects from it seemed good; but
9 gradually the United States seemed to lose interest;
10 It made light of the concessions agreed to with great
11 travail by Japan, it questioned the sincerity of Japan.
12 There seeming to be no prospect of success in that
13 direction, the Liaison Conference authorized the
14 presentation of the modus vivendi, Proposal "B".
15 It was handed over on 20 November. Both before and
16 after that date, the evidence will show, a variety
17 of efforts had been made by the Japanese represent-
18 atives to meet the American position on the points
19 at issue. Meanwhile, under the limitations of the
20 decision previously taken, and in face of the obvious-
21 ly mounting threat to the national existence, time
22 was running out.

23 "Receipt from the United States of the mem-
24 orandum of 26 November will be shown virtually to
25 have extinguished hope of preserving peace. All

1 participants in the Liaison Conference were in agree-
2 ment at last, that unless the United States could be
3 persuaded to reconsider, Japan must resort to war in
4 self-defense. Military preparations had, of course,
5 been proceeding in accordance with the 5 November
6 decision; but those preparations had been subject to
7 countermand at any time that an agreement might be
8 reached, and that even after the actual decision for
9 war was taken at the Imperial Conference of 1 December.

10 "Liaison Conferences following the decision
11 upon war considered and settled the manner of giving
12 notice before commencement of hostilities and the
13 content of that notification. Evidence will be ten-
14 dered of the decision that before the opening of
15 hostilities the United States should be notified,
16 and that a note breaking off the current negotiations
17 should be sent. Preparations were made accordingly
18 and the final note was ordered delivered in Wash-
19 ton at 1 P.M. of 7 December. The note was dispatched
20 to Washington and was there received in good time,
21 but owing to delays there in the mechanical processes
22 incident to its preparation, delivery was delayed
23 until more than an hour after the appointed time,
24 and consequently until after the attack on Pearl
25 Harbor and other points in the Pacific. All concern-

1 ed in the government and the Liaison Conference intend-
2 ed, when the matter of notice was decided, that not-
3 ification should precede any attacks.

4 "Evidence will be introduced to show that
5 the delay in delivery of the President's message of
6 6 December to the Emperor was without the knowledge
7 or authorization of the Foreign Ministry or the
8 cabinet, but that, on the contrary, the Foreign
9 Ministry made every effort to expedite its delivery,

10 "The evidence will show that the members
11 of the Liaison Conference charged with responsibility
12 for decision of the question of war or peace consid-
13 ered the final note dispatched to the United States
14 to be in the circumstances then prevailing tantamount
15 to a declaration of war, and a substantial compliance
16 with the convention governing commencement of hostil-
17 ties. That the responsible authorities of the United
18 States concurred in that opinion; that the United
19 States was amply warned of the coming of war, and
20 in fact had anticipated that the delivery of the
21 note of November 26 would result in rupture of the
22 negotiations and of peaceful relations; and, lastly,
23 that the highest military authorities of the United
24 States expected the war at the hour that it came,
25 will be shown by an abundance of evidence."

1 The first matter to be made the subject of
2 evidence in the diplomatic subdivision of the case
3 is the division of power between the military high
4 command and the government, and their interrelation.
5 In this connection I wish first to refer the Tribunal
6 to the testimony of the witness FUJITA Tsuguo, relative
7 to these matters. The attention of the Tribunal is
8 directed especially to pages 17,548 - 17,555 on the
9 responsibilities of government and high command, and
10 to pages 17,555 - 17,560 in explanation of the char-
11 acter and function of the Liaison Conference and the
12 Imperial Conference.

13 Further on this matter, I offer in evidence
14 defense document 626-A-9, being excerpts from the
15 interrogation of TOJO Hideki, which interrogation
16 has heretofore been introduced in evidence and made
17 an exhibit or exhibits for identification.
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1 THE PRESIDENT: Mr. Tavenner.

2 MR. TAVENNER: If the Tribunal please, I
3 think it is proper to point out at this time that the
4 prosecution will contend that excerpts introduced,
5 excerpts from interrogations of accused introduced by
6 the accused, are to be taken as evidence against all
7 of the accused.

8 THE PRESIDENT: I understood we decided
9 differently. Perhaps I misapprehend you, Mr. Tavenner.
10 I thought we had decided that an accused's statements
11 would be evidence against himself only. Here is an
12 attempt to make use of an accused's statements on
13 behalf of all the accused. Whether that makes any
14 difference, I cannot say. For the time being I do
15 not think it does. You may convince us that it does.

16 MR. TAVENNER: I was addressing my attention,
17 if your Honor please, to the last point that you raised.
18 What I had to say did not apply to interrogations
19 introduced by the prosecution but we contend that when
20 the defense introduce in a general phase an interroga-
21 tion or a part of an interrogation of an accused in
22 behalf of all the accused they must be charged with
23 anything in it that is adverse to them. We contend
24 that they cannot accept the sweet and reject the bitter.
25 When they introduce an excerpt in evidence they are

1 doing it voluntarily and they should--

2 THE PRESIDENT: It is not a case of just
3 tendering the sweet and rejecting the bitter. You
4 did that in the prosecution. They are tendering the
5 sweet and the bitter, I take it, but they say the
6 bitter does not apply to the other accused.

7 MR. TAVENNER: That, we submit, is identically
8 the same thing as rejecting the bitter.

9 MR. BLAKENEY: I might suggest that the
10 question raised by Mr. Tavenner can in this instance
11 be disposed of on two much narrower grounds.

12 THE PRESIDENT: I should remind you you are
13 not bound by any technical rules of evidence but we
14 have applied them. We do not get away from them
15 without due consideration. The interests of justice
16 require us to adhere to them sometimes.

17 MR. BLAKENEY: One of the grounds which I
18 referred to might be characterized as a technical
19 rule of evidence; the other is one of those rules
20 heretofore acted upon by the Tribunal in substitution
21 for technical rules of evidence. To deal with the
22 latter point first, it is that the excerpts here being
23 tendered from the interrogation of General TOJO relate
24 to the same subject matter as that of excerpts here-
25 tofore tendered by the prosecution, and I refer to

1 exhibits 1243 to be found at page 10,705 of the record
2 and 1979 to be found at page 14,553 of the record and
3 especially to the discussion of the relations of the
4 government and the high command to be found on pages
5 10,482-504.

6 As for the other ground upon which this
7 document must be received as it is offered, I call
8 attention to the fact that the defendant TOJO is
9 charged in the Indictment with acts alleged to have
10 been committed at one time in his capacities of
11 Premier and War Minister, a member of the government,
12 and at other times in his capacity as Chief of the
13 Army General Staff, a member of the high command.
14 Therefore if we wish to adopt a so-called technical
15 rule of evidence we can say that any statement by this
16 defendant relative to the responsibilities of govern-
17 ment or of high command is an admission against inter-
18 est. Therefore the excerpts presently being tendered
19 must, it is submitted, be received by the Tribunal
20 for exactly what they purport to be: evidence favor-
21 able in varying degree to all defendants but un-
22 connected with the remainder of the document which is
23 not tendered by the defendants.
24

25 THE PRESIDENT: If I recollect rightly, the
prosecution invited us not to take statements made by

1 one accused against another as evidence against that
2 other and I do not recollect that they made that on
3 any condition. We are all agreed, of course, if any
4 of the accused goes into the box then, of course,
5 everything he says is evidence against all those who
6 put him there -- who are responsible for calling him --
7 and this evidence is being offered on behalf of all
8 undoubtedly. We realize that.

9 Do you invite us to accept evidence which
10 may operate to the prejudice of other accused, Major
11 Blakeney? Are you going to put before us statements
12 of the accused TOJO which may be prejudicial to other
13 accused?

14 MR. BLAKENEY: When I stand here speaking
15 for all the defendants, of course, I shall not delib-
16 erately do anything of that nature.

17 THE PRESIDENT: The position is not the same
18 as if the accused TOJO went into the box where he
19 would be subject to cross-examination and where
20 matters prejudicial to other accused might be brought
21 out in cross-examination.

22 MR. TAVENNER: If it please the Tribunal,
23 I am contending for a very simple proposition and that
24 is that when a document is presented here by counsel
25 for the defense in behalf of the defense that the

prosecution be entitled to receive the benefit
1 of all inferences or any contradictory statements
2 that may be contained in it, with reference to the
3 subject matter presented.

4 THE PRESIDENT: That suggests to me that
5 the question is premature. The only question now
6 is what evidence is admissible and what is not.
7 The extent to which it can be used is a matter to
8 be dealt with in summation. Individual defense
9 counsel may arise, of course, and say "That is
10 not evidence against my client." We will have to
11 hear him.
12

I say the point is prematurely raised by
13 the prosecution, but I do concede that individual
14 defense counsel can arise in his place and claim
15 that the evidence is not admissible against his
16 client, but I recollect that Major Blakeney is
17 claiming to put this on behalf of all the accused.
18

19 MR. TAVENNER: If it please the Tribunal,
20 I have not objected to the introduction of the docu-
21 ment. I only considered it to be a fair matter to
22 all concerned that we make known now what our con-
23 tention would be with regard to this evidence. If
24 it is considered premature, I will have nothing more
25 to say about it.

1 MR. BLAKENEY: Since the statement of the
2 prosecution is limited to interrogations of
3 defendants, I will withdraw the tender and reoffer
4 the document on behalf of defendant TQQ6.

5 THE PRESIDENT: We cannot allow you to do
6 that, Major Blakeney. This is the general phase
7 and as I said yesterday you are now proving matters
8 in relation to all the accused.

9 MR. BLAKENEY: All the accused concerned
10 with the subject matter in question.

11 THE PRESIDENT: They are all charged as
12 being parties to one huge conspiracy.

13 MR. BLAKENEY: On the basis that your
14 Honor suggested, I will permit the tender to stand,
15 it being understood that any defense counsel who
16 wish to take objection may do so.

17 THE PRESIDENT: This is a new situation
18 for which you are not prepared. The implications
19 cannot be clear to you. You ought to consider it
20 further.

21 MR. BROOKS: If your Honor please, I would
22 like to say that I have not had a chance to study
23 this document, and I would not want my accused bound
24 by it until I at least have a chance to reserve
25 that right, because I thought the other ruling to

1 be in effect. I think over the noon recess--there
2 are a number of other attorneys who are not here
3 who might want to consider this--and I think it would
4 be wise for us to have a meeting on it.

5 THE PRESIDENT: Members of the Tribunal
6 regard this as a very serious if not a very diffi-
7 cult matter. We have debated this particular
8 matter at considerable length; not this particular
9 phase of it, but the matter generally. We will
10 expect considered argument before we decide.

11 We will adjourn until half-past one.

12 (Whereupon, at 1200 a recess was
13 taken.)

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1 MARSHALL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Blakeney.

4 MR. BLAKENEY: In connection with the
5 question raised by the prosecution before the recess,
6 there seems to be a considerable difference of opinion
7 among defense counsel, particularly in view of the
8 fact that any ruling now made on this question would
9 be presumed to have a retroactive effect in connection
10 with much evidence already received. It is therefore
11 felt that full consideration should be given to prepara-
12 tion of an argument on the question, which we are not
13 prepared to make at this time. I shall therefore
14 request leave of the Tribunal to withdraw the tender
15 of this document for the time being.

16 THE PRESIDENT: We give you leave to withdraw
17 the document.

18 MR. BLAKENEY: Another document on this point
19 touches upon the influence on the Japanese-American
20 negotiations themselves of the independence of the
21 military high command: an excerpt from the memoirs
22 of Prince KONOYE as published in the record of the
23 proceedings of the Joint Committee of the Congress of
24 the United States on the investigation of the Pearl
25 Harbor attack. I tender for identification Volume 20

1 of the proceedings, and offer in evidence the excerpt
2 therefrom, defense document 1500-V-5.

3 THE PRESIDENT: Admitted on the usual terms.

4 CLERK OF THE COURT: Defense document 1500-V-5
5 will receive exhibit No. 2865.

6 (Whereupon, the document above
7 referred to was marked defense exhibit
8 No. 2865 and received in evidence.)

9 MR. BLAKENEY: I read the excerpts:

10 "The Independence of the Supreme Command and
11 State Affairs from Each Other.

12 "The Anguish of Cabinets from Generation to
13 Generation.

14 "The fact that the Supreme Command and State
15 Affairs are independent of each other has been a matter
16 of anguish for cabinets from generation to generation.

17 "During the present Japanese-American negotia-
18 tions, too, the government on the one hand was con-
19 ducting these negotiations with all its powers, but
20 the military was vigorously making preparations in
21 case the negotiations should be broken off: Moreover,
22 as to what those preparations were, we did not know
23 at all, and it was not possible to have them go along
24 step by step with diplomacy. Since the military
25 vigorously went about moving ships, mobilizing troops,

1 etc., and these things were discovered by the United
2 States, the United States would question the sincerity
3 of our diplomacy, so that we were frequently embarrassed
4 because the relationship between diplomacy and
5 military matters was not smooth.

6 * * * * *
7 "But the Japanese constitution is built on a framework
8 of direct rule by the Emperor, and is fundamentally
9 different from the English constitution. Especially
10 in reference to the problem of the authority of the
11 Supreme Command the government has no power at all of
12 raising its voice, and the only person who may restrain
13 both the government and the Supreme Command is the
14 Emperor.
15 * * * * *

16 "Recently Premier TOJO spoke to the Lord
17 Keeper of the Privy Seal, KIDO, and sympathetically
18 that, now that he had become Premier, he understood for
19 the first time how difficult it was for the previous
20 Premiers to do things, and that he himself would to
21 the very end proceed with a duplication of posts;
22 to this I understand the Lord Keeper of the Privy
23 Seal, KIDO, replied that that was not the first time
24 that someone had said this, that it had been exactly
25 the same from the time of the first KONOYE Cabinet,

and that, late though it may be, to have the Army realize
1 this point was fine."

2 Coming now to the subject matter of the
3 Japanese-American negotiations themselves, I first
4 refer the Tribunal to exhibits 1008, record page 9,643,
5 instructions sent by Foreign Minister MATSUOKA to
6 Ambassador NOMURA, on 22 January 1941, and 1009,
7 instructions of 7 February, record page 9,648, that
8 the Ambassador work for understanding between Japan
9 and the United States.

10 I next offer in evidence another excerpt
11 from the KONOYE memoirs, being a narrative of the
12 early part of the negotiations as seen by the Premier
13 of Japan at the time, defense document 1500-Z-5.

14 THE PRESIDENT: Admitted on the usual terms.

15 CLERK OF THE COURT: Defense document 1500-Z-5
16 will receive exhibit No. 2866.

17 (Whereupon, the document above
18 referred to was marked defense exhibit
19 No. 2866 and received in evidence.)

20 THE PRESIDENT: Volume 20 was already marked
21 for identification as exhibit No. 2850. We will leave
22 it at that.

23 MR. BLAKENEY: At this time I read the first
24 two paragraphs of page 2, showing how the negotiations

had their inception.

"Beginning in December 1940, conversations for the readjustment of Japanese relations were conducted secretly between Bishop Walsh, President, and Mr. Draft, Administrative Secretary of Maryknoll (a high institution of American Catholicism), on the one hand, and Colonel IWAKURO of the Military Affairs Bureau of the Army Ministry and Mr. Tadao IKAWA on the other."

THE PRESIDENT: You are reading from page 1, paragraph 1?

MR. BLAKENEY: Yes, sir, the first two paragraphs.

"By April 1941, the time had become ripe for the governments of the two countries to conduct the conversations themselves. It should be remembered that because of the personal connections of the participants in the conversations from the first, private contact was maintained between President Roosevelt himself and Mr. Hull on the American side, and between Ambassador NOMURA and the Japanese Military and Naval Attachés in Washington on the Japanese side. Thus, both the President and the Japanese Ambassador were kept informed of what was going on."

I read only that far at this time.

THE PRESIDENT: Mr. Tavenner.

1 MR. TAVENNER: If the Tribunal please, I think
2 I should call to your attention that on page 5,
3 where the asterisks appear near the bottom of the page
4 just prior to the page reference of 3997, there is
5 an omitted paragraph which we think is material to be
6 read. It is only five lines in length and I would like
7 to have permission to read it and get through with it.
8

9 THE PRESIDENT: We did not allow the defense
10 to wedge their case in the prosecution's in this way.
11 If the defense object, you may have to wait until
12 rebuttal.

13 MR. TAVENNER: I understand it is only a
14 request that I am making, but I would also like to
15 point out that I have just been informed that Rule 6-b(1)
16 had not been complied with for a longer period than
17 two days in connection with this document.

18 THE PRESIDENT: I think all Members of the
19 Tribunal would like to know what the five lines are now.

20 MR. TAVENNER: (Reading) "It was thought
21 necessary to define these three points clearly for the
22 sake of the future. In other respects the American
23 proposal was all right. However, even in the eventuality
24 of a breakdown in negotiations, matters should be pro-
25 longed until after the entrance of Japanese troops into

French Indo-China."

1 MR. BLAKENEY: Of course, I should like to
2 object to this type of procedure, particularly as I
3 note that counsel seems to have a long list of excerpts
4 which he proposes to insert in this way.

5 And I wish to call attention to the fact that
6 counsel is reading from no document which is in evidence.
7 If he were reading part of my document, I should have
8 no objection, but we do not know what he is reading
9 from and there is no evidence to support his statement
10 except that he says that is part of the document.

11 THE PRESIDENT: We thought that you agreed to
12 his reading what he did read. We merely expressed a
13 wish that it might be done and that was received in
14 silence as Mr. Tavenner proceeded to read. We were
15 under a misapprehension.

16 MR. BLAKENEY: I expressed neither agreement
17 nor dissent because I understood the Tribunal to be
18 directing the reading of that portion.

19 THE PRESIDENT: I gave no direction. The
20 transcript will show it.

21 MR. BLAKENEY: I always assume the statement
22 of the Tribunal's desire to be equivalent to the Tri-
23 bunal's ruling.

24 MR. TAVENNER: In view of the objection, we

1 . will wait until rebuttal to read the other excerpts,
2 if the Tribunal please.

3 MR. BLAKENEY: Ambassador NOMURA presented
4 his credentials to President Roosevelt on 14 February
5 1941, as is shown by exhibit 1043, record page 9,798.
6 I wish to call especial attention of the Tribunal to
7 the suggestion of the President that the Ambassador
8 meet with the Secretary of State to review relations
9 between the two countries with a view to their improve-
10 ment.

11 Exhibit 1056, record page 9,843, is an excerpt
12 from a record of a conversation of 8 March between
13 Secretary of State Hull and Ambassador NOMURA. At
14 this point I offer in evidence a further excerpt from
15 the same record, defense document 1400-A-6.

16 THE PRESIDENT: Admitted on the usual terms.

17 CLERK OF THE COURT: Defense document
18 No. 1400-A-6 will receive exhibit No. 2867.

19 (Whereupon, the document above
20 referred to was marked defense exhibit
21 No. 2867 and received in evidence.)

22 MR. BLAKENEY: I read the excerpt for the
23 purpose of showing that the Secretary urged the
24 Ambassador to enter into conversations for adjustment
25 of relations.

"Washington, March 8, 1941.

1 "The Japanese Ambassador called at my apart-
2 ment at the Carlton Hotel by an indirect arrangement
3 based on the equal and joint initiative of himself and
4 myself growing out of his talk with the President in
5 my presence some days ago.
6

7 "I said that I came from the President who
8 sent his regards and said that he would be only too
9 glad at any time to talk further with the Ambassador
10 just as two old friends would talk, and do so offi-
11 cially and unofficially, or individually at times, if
12 desired by either. I pointed out that such a meeting
13 could be arranged unobtrusively and without publicity,
14 and in a manner permitting the initiative to be
15 shared on a 50-50 basis between him and the President.
16 The Ambassador said he might call on the President
17 the next time; that he would hope to continue these
18 conversations. On two or three occasions I inquired
19 of him whether it was still agreeable to pursue the
20 President's suggestion of talking over and discussing
21 the past relations between our two governments and the
22 questions that have arisen which call for settlement
23 by mutual agreement. He indicated his favorable dis-
24 position in regard to the matter, but not in any

1 specific way as to time or as to officials with whom
2 he might talk.

3 "I referred on one or two occasions to the
4 statement reported to have been made to Mr. Churchill
5 by the Japanese Ambassador in London some days ago to
6 the effect that his government would not attack
7 Singapore or the Netherlands East Indies, and inquired
8 pointblank what the Ambassador's idea as to this was.
9 In reply to the first inquiry, he was not exceedingly
10 strong in his statement but he did make it fairly
11 definite that he did not believe there would be an
12 attack but added, as heretofore indicated, that if our
13 American embargoes continued to press his government and
14 the military group in control, they may feel forced to
15 proceed further in a naval or military way."

16 On the 14th of March, the Ambassador again
17 called on the President and held a conversation of
18 which part appears as exhibit 1057. I offer, to show
19 further pressure by the American authorities for Japan
20 to "take the initiative," an additional excerpt from
21 the memorandum of that conversation, defense document
22 1400-B-6.

23 THE PRESIDENT: Admitted on the usual terms.
24 CLERK OF THE COURT: Defense document 1400-B-6
25 will receive exhibit No. 2868.

(Whereupon, the document above referred to was marked defense exhibit No. 2868 and received in evidence."

MR. BLAKENEY: I read exhibit 2868.

"Washington, March 14, 1941.

"The Ambassador of Japan called at the White House at his request. The President and I were present at the meeting.

• • • •

"The President then...stressed the close ties existing between Thailand and Japan, adding that the former was more closely related to Japan in many ways than the Argentine was related to the United States. The President said that the suggestion had been made now and then that the United States take over the West Indies, but that the attitude of this government unreservedly has been to see each country preserve its sovereignty, its territorial integrity and equality of opportunity, and that all the nations of the world can on the same basis come and trade with the nations of this hemisphere. The Ambassador admitted that we had been treating Central and South America extremely well, and that we had developed greatly the good neighbor relationships.

• • • •

"The Ambassador said that Japan had no idea
1 of controlling China . . . The Ambassador joined with
2 the President a number of times in expressing the view
3 that differences between the countries could and should
4 be worked out. The Ambassador did not, however, respond
5 to requests for any additional methods of approach
6 beyond the Chinese-Japanese question. He did not say
7 so, but I inferred that he would probably be returning
8 in due time for another conference. I made it clear
9 that Japan, having departed from the course that both
10 countries have been pursuing, the initiative and the
11 responsibility are hers to suggest what, how and when,
12 she is willing, as a preliminary step, to undertake
13 serious discussions, and that above all she must make
14 it clear by words and acts of her serious intentions in
15 this direction."

The private individuals mentioned earlier had
17 meanwhile continued their work toward an understanding,
18 and on 8 or 9 April presented to the State Department a
19 draft of an understanding to serve as a basis of
20 negotiation. This draft has been introduced into
21 evidence as exhibit 1059, record page 9851. As a
22 sequel to its appearance, Secretary Hull asked Ambassador
23 NOMURA to call and again suggested that negotiations
24 commence, as is shown by an excerpt from the record of

1 the conversation, defense document 1400-C-6, which I
2 offer in evidence.

3 THE PRESIDENT: Admitted on the usual terms.

4 CLERK OF THE COURT: Defense document 1400-C-6
5 will receive exhibit No. 2869.

6 (Whereupon, the document above
7 referred to was marked defense exhibit
8 No. 2869 and received in evidence.)

9 MR. BLAKENEY: Before I read the exhibit, it
10 may be added for completeness that other parts of this
11 conversation of the 14th of April have been introduced
12 into evidence as exhibit 1060, record page 9863.

13 (Reading): "Washington, April 14, 1941.

14 "The Ambassador of Japan called at my apart-
15 ment at the Wardman Park Hotel at my request.

16 "Near the close of the conversation I sug-
17 gested that, having cleared up these preliminary phases
18 for which I sent for him, we could, if desired on his
19 part, proceed at any time with certain preliminary
20 discussions with a view to ascertaining whether there
21 is a basis for negotiations; that for the purpose of
22 this preliminary discussion there would really be no
23 occasion for either side to present officially any
24 completed documents. The Ambassador raised some
25 question as to why such documents might not be

1 presented in the next conversation, and I replied
2 that there were certain points that my government
3 would desire to raise prior to negotiations, such as
4 questions pertaining to the integrity and sovereignty
5 of China, to the principle of equality of opportunity
6 in China, et cetera; that he could then communicate
7 with his government and ascertain whether it agrees
8 that there is a basis for negotiations. The Ambassa-
9 dor readily agreed to this view. He emphasized that
10 he had not yet presented this document to his govern-
11 ment or consulted it concerning concrete terms of
12 settlement, but stated that, in his opinion, his govern-
13 ment would be favorably disposed along such lines as
14 might be made the basis of an agreement.

15 "I said, in conclusion, that I would communi-
16 cate with the Ambassador later today with a view of
17 agreeing on a time and place for the next conference,
18 adding that it could be at my office or at the White
19 House or in my apartment, although the President was
20 planning on leaving for Warm Springs within a day or two.
21 The Ambassador referred to the interruptions of the
22 press and suggested that he come to my apartment, which
23 he would be ready to do any day from this day on, and
24 he again emphasized the urgency of the situation, saying
25

1 events were moving rapidly and that my country is
2 likewise moving rapidly with the result that clashes
3 would become more easily possible from week to week."

4 As is shown by exhibit 1061, record page
5 9866, there was a further meeting between Secretary
6 Hull and Ambassador NOMURA on 16 April, at which
7 time, according to the Ambassador's report, the
8 Secretary offered to commence negotiations on the
9 basis of the draft plan. I offer in evidence defense
10 document 1401-A-1, the Ambassador's telegram of
11 17 April making report to Premier KONOYE.

12 THE PRESIDENT: Admitted on the usual terms.

13 CLERK OF THE COURT: Defense document
14 1400-A-1 will receive exhibit No. 2870.

15 (Whereupon, the document above
16 referred to was marked defense exhibit
17 No. 2870 and received in evidence.)

18 MR. BLAKENEY: I read the telegram.

19 "From NOMURA to KONOYE. 17 April 1941.

20 "I had a talk with the Secretary of State
21 today, at his private residence. He offered to com-
22 mence the negotiations with a draft which will be
23 conveyed separately in my telegram No. 234.

24 (Tentatively it will be called Draft Understanding.
25 As to this draft, we had been sounding out the

intention of the American Government privately until
1 we could ascertain that Secretary Hull had no ob-
2 jection to it in general. Thereupon, the plan has
3 been framed after complicated negotiations, in which
4 I partook in private.) And it was his request that
5 I should obtain instructions of the Japanese Govern-
6 ment in this connection, lest the agreement reached
7 between the Secretary of State and myself should be
8 disavowed by the Tokyo Government, in which case the
9 American Government would be put in a very awkward
10 position.

11 "We have made a careful study of the matter
12 with the members of the Embassy staff, military and
13 naval attaches, Colonel IWAKURO, et al. We have
14 also given full consideration to the state of affairs
15 at home and abroad, and have, working as one, exerted
16 efforts to make the present understanding advantageous
17 for us. But, of course, it does not cover all aspects
18 of Japanese-American relations. With respect to the
19 contents of the items, also, it is feared that they
20 have defects. Nevertheless, it is our belief that,
21 if an understanding to such an effect be reached on
22 this occasion,

23 "(1) it will not be contradictory to the
24 spirit of the Imperial Rescript given on the occasion
25

1 of the conclusion of the Tripartite Alliance, and it
2 is presumed that the conclusion of the understanding
3 will even conform to the Imperial wishes;

4 "(2) it will not betray the faith of the
5 Tripartite Alliance;

6 "(3) it will be the first step toward
7 maintenance of the peace of the Pacific, which is
8 the fundamental policy of the Japanese Government; and

9 "(4) it will further serve as the ground-
10 work for Japanese-American cooperation in rebuilding
11 the peace of Europe.

12 "In this connection, I earnestly request
13 your instruction allowing me to proceed with the
14 negotiations according to this plan, leaving all the
15 defects thereof to be remedied at the proposed con-
16 ference."

17 Ambassador NOMURA at the same time sent to
18 Premier KONOYE an explanation of the draft proposal,
19 which I offer in evidence as defense document 1401-B-1.
20

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-B-1
will receive exhibit No. 2871.

(Whereupon, the document above
referred to was marked defense exhibit
No. 2871 and received in evidence.)

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1 MR. BLAKENEY: In reading this telegram
2 I wish to call special attention to the fact, among
3 others, that the American Ambassador's report em-
4 phasizes the part played in preparation of the
5 draft plan by American authorities.

6 "From NOMURA to KONOUE

7 "18 April 1941

8 " In reference to the latter part of No. 235
9 "The following is the explanation of the Draft
10 Understanding section by section.

11 "(1) The concepts of the United States and
12 of Japan respecting international relations and the
13 character of nations.

14 "As the Americans fear the totalitarianization
15 of Japan, and consider it impossible to carry on talks
16 between Japan and the United States if Japan is
17 totalitarianized, this section is designed to clarify
18 that the Japanese idea is not totalitarianism nor
19 Communism nor Democracy, but is based upon the tradition-
20 al concept of the nation held for three thousand years,
21 and is not to be dominated by foreign ideas contrary
22 to that tradition. This section is inserted by reason
23 of the strong request at the desire of the highest
24 American authority that it be done. Secretary Hull
25 also has emphasized this point to me. Considering it

1 a good opportunity to proclaim our national character,
2 I have agreed to retaining this section after making
3 some revisions.

4 "(2) The attitude of both Governments toward
5 the European war.

6 "This section is one to which we have paid
7 the utmost care, in connection with the Tripartite
8 Pact. The purposes of this section are:

9 "(a) to make it clear that our obligations
10 under the Tripartite Pact shall be in no way affected
11 by the present understanding;

12 "(b) to restrain the United States to the
13 utmost from entering into the European war, and to
14 make full use of the spirit of Article 3 of the Tri-
15 partite Pact; and at the same time

16 "(c) to avoid a rupture of relations between
17 Japan and the United States and to achieve the objectives
18 of the Tripartite Pact.

19 "(3) The attitudes of both Governments toward
20 the China Affair.

21 "The United States at first was considering
22 the settlement of the China Affair through the arbitra-
23 tion, or mediation, of the American President, and
24 seemed on the other hand to disapprove entirely of the
25 Wang Government. I have had it explained fully to

them that such a proposal would have no chance of
1 acceptance by Japan, and have got them to agree -- with
2 a view to preventing the United States from intervening
3 in the settlement of the China Affair -- that the
4 United States will only offer its good offices for peace
5 between Japan and China, that the negotiations will be
6 conducted directly between Japan and China, and that
7 the other party to the negotiations will not be Chung-
8 king. Hence the present proposal.
9

"As to the essential conditions of the peace,
10 I have got them to recognize the so-called Three KONOUE
11 Principles -- namely, neighborly friendship, joint
12 defense against Communistic activities, and economic
13 cooperation. With respect to the withdrawal of troops,
14 it is made clear that the withdrawal will be carried
15 out in accordance with an agreement to be concluded
16 between Japan and China, so that there will be no
17 conflict with the Treaty of Basic Relations between
18 Japan and China and the documents attached thereto.
19 In connection with the Open Door, the interpretation
20 and application of the Open-Door Principle have been
21 left to future consultation, and no stipulation is
22 inserted -- though it had at first been intended to
23 insert one -- concerning our special position in North
24 China and Mongolia, in view of the delicate question
25

1 of Hainan Island. The clause concerning immigration
2 is inserted at the American desire, and from the
3 consideration that practically it will do no harm
4 to us. It is clear that Manchoukuo is not included
5 within the territory of China, from the fact that
6 recognition of Manchoukuo is made one of the conditions.

7 "It is our opinion that the foregoing conditions
8 proposed by and guaranteed to the United States are
9 not in conflict with the Three KONO Principles, the
10 Treaty of Basic Relations between Japan and China, nor
11 the Japan-China-Manchoukuo Joint Declaration promulgated
12 last year.

13 "It is said that although the United States
14 has the intention of ceasing aid to the Chiang regime
15 in case it does not accept the recommendation of the
16 President of the United States, there are objections to
17 putting it in writing at this stage.

18 "(4) Naval, aerial and mercantile marine
19 relations in the Pacific

20 "(a) At first, the United States appeared to
21 have the intention of agreeing to mutual assistance
22 by the Japanese and American navies for the maintenance
23 of peace in the Pacific; but this was altered to the
24 present formula from the consideration that such an
25 agreement of mutual assistance would make Germany and

1 Italy our hypothetical enemies, and would also give
2 birth to the misunderstanding that it was a military
3 alliance between Japan and America.

4 "(b) As to the merchant-marine question, the
5 clause is inserted from the consideration that it is
6 quite natural, in view of her present shortage of
7 bottoms, that America should make such a request, and
8 that it is advisable for Japan to comply with it with
9 a view to the future development of our marine activities.
10 As, however, we ourselves are suffering from a shortage
11 of shipping, the time is specified to be after the
12 settlement of the China Affair has been put under way.
13 It is sought thereby to expedite the American recommend-
14 ation for peace between Japan and China.

15 "(5) Commerce between both nations and their
16 financial cooperation.

17 "The gold credit provided by this section is
18 intended to utilize the excess of gold stored by the
19 United States for payment for goods necessary for Japan
20 in the development of the homeland and East Asia.

21 "(6) Economic activity of both nations in the
22 Southwest Pacific area.

23 "There being danger that the advance of
24 Japan by force to the South would lead to war between
25 Japan and the United States, Japan guarantees that her

1 development toward the South will be made not by
2 armed force but by peaceful means, and the United
3 States in response makes it clear that she will
4 support the economic advance of Japan in that area.
5 That the advance of Japan toward the South will not be
6 carried on by force is not limited to this section,
7 but is the foundation of the whole of the present under-
8 standing.

9 "(7) The policies of both nations affecting
10 political stabilization in the Pacific.

11 "European powers will be restricted by this
12 clause, but Japan will not be. As to immigration to
13 the United States, Secretary Hull told me that this
14 question involved problems concerning the states,
15 causing domestic difficulties. Not much, therefore,
16 can be expected.

17 "As to the stipulations concerning the Japanese-
18 American conference, the United States maintained that
19 it was necessary as a domestic gesture, and we consider
20 that there is no special objection to it. This is
21 nothing more than statement of the principle of the
22 conference; there may be defects in the procedure, but
23 they may properly be cured in the talks to be held
24 hereafter.

25 "I had opinions exchanged on the questions of

1 the New Order in East Asia, the recognition of
2 Japan's leadership in the Greater East Asia Co-
3 prosperity Sphere, etc., in addition to the points
4 included in the understanding mentioned above; but as
5 it was felt that they would complicate the negotiations,
6 I dropped these problems, making it our primary objective
7 to obtain practical results."

8 THE PRESIDENT: Mr. Comyns Carr.

9 MR. COMYNS CARR: If it please the Tribunal,
10 it will be of assistance in understanding my friend's
11 presentation if he will tell us what is the document
12 on which Ambassador NOMURA is supposed to be commenting
13 in this telegram.

14 MR. BLAKENEY: As I stated in offering the
15 document, it was his comment on the draft plan which
16 appears in evidence as exhibit 1059.

17 MR. COMYNS CARR: That is, as I understand
18 it then, the draft plan prepared by private individuals
19 and not by the United States Government at all.

20 MR. BLAKENEY: My understanding is that it is
21 the draft plan prepared by private individuals, and,
22 as reported by Ambassador NOMURA, presented to him as
23 a basis for negotiations by the United States Government,
24 as is shown in exhibit 2870 read just a moment ago.

25 MR. COMYNS CARR: That was not so stated by

1 Mr. Ballantine, nor was any such suggestion, as far
2 as I am aware, put to him in cross-examination.

3 MR. BLAKENEY: I appreciate that the testimony
4 of the witness for the prosecution was different, but
5 I do seem to remember cross-examining Mr. Ballantine
6 on that point for something like half an hour, and
7 I may as well state for counsel's information and the
8 Tribunal's that, as was indicated by the cross-examination
9 of Mr. Ballantine, we propose and intend to contradict
10 him on a number of points in this matter.

11 MR. COMYNS CARR: May I point out to the Tribunal
12 the defense can't contradict Mr. Ballantine merely
13 putting in a telegram from Admiral NOMURA without
14 calling Admiral NOMURA to swear to the truth of it.

15 MR. BLAKENEY: That might, of course, be a
16 questionable point in view of the fact that these are
17 official records sent in the course of official duty.
18 But, however that may be, the official reports sent
19 by the Japanese Ambassador in Washington are certainly
20 admissible as the information and understanding upon
21 which these defendants were moved to act.

22 If Ambassador NOMURA's reports were a complete
23 tissue of falsehood, nevertheless, in the absence of
24 evidence that these defendants knew them to be so,
25 certainly they would constitute justification for these

defendants' actions.

1 THE PRESIDENT: That is your submission.
2

3 MR. BLAKENEY: That is my submission.
4

5 I return now to the Memoirs of Prince KONOYE
6 and read further passages from exhibit 2866 as
7 explanation of the action taken in Japan upon Ambassador
8 NOMURA's report of the proposed negotiations. From
9 Exhibit 2866 I read from page 1, commencing with the
fourth paragraph:
10

11 "Ambassador NOMURA's dispatch containing these
12 important representations by Mr. Hull and the contents
13 of the Plan (tentatively called the Proposal for
14 Japanese-American Understanding), which was to provide
15 the basis for the conversations, was received at the
16 Tokyo Foreign Office between the afternoon of April 17th
17 and the morning of the 18th. Since Foreign Minister
18 Yosuke MATSUOKA was then in Siberia on his way home
19 from his visit to Europe, Mr. OHASHI, Vice-Minister
20 of Foreign Affairs, at 11 A.M. on the 18th, brought the
21 first section of the dispatch to me while I was in a
22 Cabinet conference. At 4:30 P.M. on the same day, after
23 waiting for the cable to be decoded, he called on me
24 at my official residence, accompanied by Mr. TERASAKI,
25 Chief of the American Bureau.

1 "This Proposal for Understanding was to
2 announce, in the form of a joint declaration, an
3 agreement between the two Governments on several
4 fundamental items necessary for breaking the dead-
5 lock between the two countries. Detailed agreements
6 were to be arranged by a Japanese-American confer-
7 ence to follow the joint declaration.

8 "In view of the importance of the matter,
9 I summoned a joint conference of high government and
10 military leaders for 8 o'clock that very night.

11 "The Government was represented by the
12 Premier, the Home Minister, the War and Navy
13 Ministers and also by Mr. OHASHI, Vice-Minister of
14 Foreign Affairs. The Chiefs of the Army and Naval
15 General Staffs represented the Supreme Command.
16 Also present were the Directors of the Military
17 Affairs Bureaus of the War and Navy Ministries, and
18 the Chief Cabinet Secretary. The concensus of opinion
19 regarding the American proposal was as follows:

20 "1. Acceptance of the American proposal
21 would be the speediest way toward disposal of the
22 China Incident. That is to say, no effective re-
23 sults had been obtained by the setting-up of the
24 Wang Regime, direct negotiations with Chungking were
25 becoming more difficult, and Chungking was entirely

1 dependent upon America; consequently negotiations
2 with Chungking were possible only through the good
3 offices of America. In view of these facts it was
4 quite clear that acceptance of the American proposal
5 would be the speediest way toward disposal of the
6 China Incident.

7 "2. To accede to this proposal and to plan
8 for a rapprochement between the two countries would
9 not only provide the best means of avoiding a
10 Japanese-American war, but would also be a pre-
11 requisite to preventing the European war from assum-
12 ming the magnitude of a world war and to the creation
13 of world peace.

14 "3. The considerable depletion of Japan's
15 national strength made it desirable to restore and
16 cultivate that strength by disposing of the China
17 Incident as quickly as possible. For the success of
18 Japan's southward advance which was being advocated
19 in certain quarters, the supreme command itself con-
20 fessed to having neither the confidence of success
21 nor the necessary preparation. The cultivation of
22 national strength, moreover, necessitated the tem-
23 porary restoration of amicable relations with America
24 and planning for the replenishment of the supply of
25 vital commodities for the future.

1 "Thus, the participants were in favor of
2 accepting the American proposal. However, the
3 following items were brought forth as conditions of
4 acceptance:

5 "1. It should be made clear that there
6 would be no infringement of the Tripartite Pact.
7 This was considered axiomatic in view of Japan's
8 keeping faith with Germany.

9 "2. It should be made more clear that the
10 object of Japanese-American cooperation was the pro-
11 motion of world peace. If the understanding between
12 the two countries were to relieve America of her
13 commitments in the Pacific and thus afford her an
14 opportunity for increasing her support of Britain,
15 Japan would be breaking faith with Germany, which
16 would be improper, and it would constitute a lowering
17 of the tone of the whole concept of the proposal.

18 "3. The contents of the proposal were too
19 complex.

20 "4. Since the text gives the impression of
21 a return to the old world order, clearer expression
22 should be given to the constructive side of the pro-
23 posal, namely, the idea of building a New Order.

24 "5. Speedy action was necessary to avoid
25 the probable leakage of intelligence. For this reason

the return of the Foreign Minister to Japan must be
1 urged.

2 "After the joint conference on the 18th,
3 the Army, Navy and Foreign Office immediately started
4 examination of the proposal. In the meantime,
5 TERASAKI, Chief of the American Bureau of the Foreign
6 Office, wished to cable instructions to Ambassador
7 NOMURA to transmit to America Japan's 'acceptance in
8 principle' of the proposal. Vice-Minister of Foreign
9 Affairs OHASHI, although in favor of the idea, vetoed
10 it; he insisted that the answer be dispatched after
11 the Foreign Minister's return. Foreign Minister
12 MATSUOKA finally reach Dairen on the 20th, and I got
13 in touch with him by telephone. It was learned later
14 that the Foreign Minister then said to persons close
15 to him, 'The American proposal has probably come as
16 the fruit of what I said in Moscow to Mr. Steinhart,
17 the American Ambassador to Soviet Russia.' In fact,
18 the Foreign Minister, on his way both to and from
19 Europe, had held conversations in Moscow with Mr.
20 Steinhart, an old acquaintance, asking him to urge
21 President Roosevelt, if the latter was really fond of
22 gambling, to have faith in Japan and to lend a helping
23 hand for the sake of Sino-Japanese peace. MATSUOKA
24 had reported this to me by cable under the date of
25

1 April 8th, and apparently had been secretly expecting
2 his move to bear fruit.

3 "Because of adverse weather, the Foreign
4 Minister was delayed a day, returning to Tokyo on
5 April 22nd. Since a joint conference had been sched-
6 uled for the very evening of his arrival, the exami-
7 nation of the American proposal, by the Army, Navy,
8 and Foreign Ministries, had been roughly completed
9 on the 21st. In addition, the Army and Navy held a
10 joint conference that same day at the Navy Club, the
11 respective Ministers and Heads of Departments, Bureaus
12 and Sections participating, and presented a memorandum
13 to me which stated that 'Japan must turn the American
14 scheme to good advantage and by embracing the prin-
15 ciples embodied in the proposal, attain the objectives
16 of the China Incident, restore the national strength,
17 and thereby attain a powerful voice in the establish-
18 ment of world peace.'

19 "There was no denying, however, that despite
20 his outward demeanor, the Foreign Minister was giving
21 concentrated thought to the handling of the problems
22 then pending between America and Japan. It was
23 learned later that on his sick-bed MATSUOKA had been
24 closely examining both the text of the American pro-
25 posal and the revision of the same which had been

1 drawn up by the appropriate authorities of the Army,
2 Navy, and Foreign Ministries. In addition, he was
3 also thoroughly revising the latter. A third joint
4 conference was finally held on May 3rd.

5 "Those participating in the conference
6 approved, on the whole, of the revised proposal
7 prepared by the Foreign Minister. The main points
8 of the revision were the elimination of Item IV,
9 'Naval Strength, Air Strength and Shipping of the
10 two countries in the Pacific;' the insertion of a
11 new clause under Item '2, 'Attitudes of the two
12 countries toward the European War,' covering the
13 mediation of Japan and America between Britain and
14 Germany; and clear definitions of Japan's obligations
15 under the Tripartite Pact. Other points were the
16 withholding of the announcement of the China Incident
17 peace terms, the deletion of Japan's declaration not
18 to carry on a southward military advance, and the
19 deletion of the agreement concerning Japanese-
20 American conversations."

21 I cease reading for the time being at that
22 point.

23 Meanwhile, the Ambassador in Washington had
24 sent a report emphasizing the great interest of the
25 President in the negotiations, but at the same time

1 warning that anti-Japanese sentiment in the United
2 States was already high. This telegram, defense
3 document 1401-C-1, is offered in evidence.

4 THE PRESIDENT: Admitted on the usual terms.

5 CLERK OF THE COURT: Defense document
6 1400-C-1 will receive exhibit No. 2872.

7 (Whereupon, the document above
8 referred to was marked defense exhibit
9 No. 2872 and received in evidence.)

10 MR. BLAKENEY: Because of its interest as
11 being the foundation of the understanding of the
12 Tokyo authorities of the American attitude, this
13 telegram is read in its entirety:

14 "From NOMURA to MATSUOKA

15 "8 May 1941

16 "In reference to my previous telegram No. 273,
17 the following is submitted as a supplementary report.

18 "(1) The real power, in a political as well
19 as in an economic sense, of the Government of the
20 United States has come to be held in the hands of
21 Roosevelt recently, especially since the National
22 Defence Act passed Congress. The dictatorial tendency
23 is more remarkable than ever. And Washington is now
24 in a lively condition unprecedented in history, with
25 crowds of statesmen and financial experts of all grades.

Meanwhile, leading newspapers and news agencies are controlled by Roosevelt, and the so-called public opinion is being dexterously molded, in reality, by the President. It is quite impossible that the public opinion thus molded by Roosevelt should be mollified, or changed, through the activity of the statesmen and the critics who embrace the creed of 'America First.' Whoever criticizes the policy of Roosevelt, or whoever speaks or acts against it, will be ostracized from society as a traitor or a spy. The freedom of the press, it seems, is being lost rapidly. Those who used to be called 'The Brains' of Roosevelt have become alienated from him one after another, and he has now only Hopkins, Walker (who has supported Roosevelt for the past twenty years, and headed his campaign office when Roosevelt ran for the Presidency for the third time) and Hull as his close associates who can give him effective advice. But important affairs of state are decided, it seems, by the President himself. It is certain that the plan for the readjustment of Japanese-American relations, which I reported the other day, was decided by the President in person, in deliberation with the three advisers above mentioned and the Secretary of the Navy, while Stimson and other Cabinet members, as well as the

1 officials of the Department of State, were all ex-
2 cluded from the conference. It is said that Hull
3 told the Under-Secretary of State and other officials
4 that the Japanese-American problem would be decided
5 among the highest leaders of the Government.

6 "By the way, Roy Howard, who we consider
7 is of considerable use and with whom Your Excellency
8 is on friendly terms, is now rather distant from the
9 President, partly because he took a stand against
10 Roosevelt on the occasion of the last election and
11 in the debate on the National Defence Act.

12 "(2) As for the view of the world which the
13 majority of Americans, especially the President,
14 embrace -- which regards the present war as a strife
15 between totalitarianism and democracy; which considers
16 totalitarianism a stain upon humanity because it.
17 denies the freedom of the individual; which will not
18 recognize any transfer of territories resulting from
19 aggression; which believes in the final destruction
20 of aggressors, as endorsed by the examples of Caesar
21 and Napoleon, though they may achieve temporary suc-
22 cess; which urges that America hold Britain, the
23 stronghold of democracy; and which points to the
24 possibility that the present Anglo-German war may be
25 converted into a German-American war -- no one indeed

1 could alter it, at present or in future. Whoever
2 tries to give well-meant advice will be cast out of
3 society as an enemy of America. As to the issue of
4 the war, there are many who entertain the optimistic
5 opinion that the war will be protracted, and that
6 Germany (including the occupied countries) will surely
7 come to destruction, if the United States helps
8 Britain on a large scale. Some Americans -- like
9 Lindbergh, for example -- entertain opinions which
10 are considered proper from our standpoint, but it is
11 only a minority of the people who support them.

12 "Accordingly, there is no possibility, in
13 present circumstances of the United States taking the
14 initiative in making peace between Britain and Germany,
15 unless Britain sustains a complete defeat. She will
16 concentrate her energies on the effectuation of the
17 national defence plan, in order to increase the
18 supply of aid to Britain, and at the same time to
19 complete her own epoch-making armament. Meanwhile,
20 she will practice convoying, by enlarging the scale
21 of the patrolling already practiced. And it is at
22 the risk of war that the United States practices con-
23 voying. There is great danger, therefore, that it will
24 lead to her participating in the Great War. In this
25 connection, precautions should be taken against the

recent rapid rise of opinion approving participation
1 of the United States in the present war with the
2 object of cooperating with Britain in her effort to
3 recover from the discouraging situation she has
4 fallen into in the Balkans and in the Near East.
5 It will be disadvantageous for the United States, con-
6 fronted by such a delicate situation, to have both
7 Japan and Germany at once as countries of enemy
8 character. On this ground, it is rather reasonable
9 to think that the United States is willing to re-
10 adjust her relations with Japan, who is the less
11 dangerous of the two, and this view is endorsed, it
12 is believed, by the fact that the United States Govern-
13 ment is going to open negotiations with Japan along
14 the lines of the so-called 'Draft Understanding.'
15 Nevertheless, it is not correct to think, on this
16 account, that the United States is going to take
17 sides with Japan. According to what I am confiden-
18 tially told, the United States seems to have the
19 intention of making strenuous efforts in the Pacific
20 area against the day when she actually fights Japan
21 and Germany, and to wage a decisive war against Japan
22 with her colossal Navy and Air Force which will be
23 completed several years from now.
24

25 "As for the general feeling of Americans

1 toward Japan, she is second only to Germany and
2 Italy in unpopularity, on the ground that the whole
3 nation is taking sides with these two states. The
4 President, however, revealed to me on the occasion
5 of my presenting my credentials that he was a
6 friend of Japan. The President and his few close
7 associates have come to recognize, it seems, that
8 Japan is not essentially aggressive, that her
9 national character is utterly different from that of
10 Germany or Italy, and that rapprochement with Japan
11 is advantageous to the United States herself also.
12 (Attention must be called to the fact that it is
13 advantageous to the United States.)

14 "(3) The situation being as stated above,
15 some step or other must be taken now, or the pro-
16 Japanese sentiment of the President and his close
17 associates will cool off. The result, then, would
18 be the bringing about of complete economic disruption.
19 Japan would be compelled for her existence to advance
20 southward by force. There is every danger, it is
21 considered, that it might develop into general war-
22 fare.

23 "In restoring friendly relations with the
24 United States, the opportunity we are to take must
25 be chosen from among the following three:

1 "(a) the present occasion, when the issue
2 of the European war cannot yet be forecast;

3 "(b) the day of Germany's decisive victory;

4 and

5 "(c) the time when both get tired of the
6 protracted war.

7 If the occasion (a) is seized, the keynote would be
8 that the two countries make a compromise -- peace on
9 an equal footing. Although this might be unfavorable
10 for Japan in case the war ended in a German victory,
11 it has the advantage that Japan would be able to
12 settle the China Affair before the war in Europe was
13 over and to deal with the post-bellum questions with
14 freedom of action. Moreover, Japan would be able to
15 replenish her national power under favorable con-
16 ditions, and accordingly would have the advantage of
17 promoting greater cooperation with Britain. As for
18 (b), surely it would be a desirable situation in the
19 general view; however, so far as Japan is concerned,
20 she would have to face the situation saddled with the
21 heavy burden of the China Affair. There would be no
22 little difficulty in replenishing her national power
23 in such circumstances, and the danger is foreseen
24 that her demands might be checked by a third power.
25

And what is worse, no one knows when the day of

1 Germany's decisive victory will come. Lastly, if
2 we wait for (c) (though it is hardly possible) the
3 hope of readjusting Japanese-American relations
4 would be lost forever, for the United States will
5 have participated in the war, in all probability,
6 by that day.

7 "Taking such a danger into consideration,
8 the United States, too, had entertained the opinion
9 that it is to her interest to restore friendly re-
10 lations with Japan as early as possible.

11 "As to the contents of the plan for the
12 restoration of friendly relations between Japan and
13 the United States, it was at first intended to deal
14 chiefly with the achievement of the purpose of the
15 Tripartite Pact and the avoidance of a Japanese-
16 American war. But circumstances have compelled us
17 to deal en bloc, in their mutual inter-relations,
18 with such problems as the clarification of the re-
19 lations of Japan with Germany and those of the United
20 States with Britain; the China Affair; the problem of
21 the South; the vise' problem; the economic problems;
22 etc. It is hardly practicable, therefore, to deal
23 exclusively with a part of the problem, such as
24 commercial agreement, in the present conditions of
25 Japanese-American relations. On the other hand, there

would be little possibility of success in proposing
1 a peace founded on the New Order in East Asia or of
2 the world, seeking a fundamental solution on philo-
3 sophical principles; that would only throw doubt on
4 the true motives of Japan. We have actually repeat-
5 edly, in the course of the negotiations in the back-
6 ground to reach the Draft Understanding, had our
7 delegates request the Government of the United States
8 to recognize our new order, and propose offering our
9 services to mediate the Great War, only to become
10 convinced that the United States would never agree.

11 (There is no doubt that the United States also would
12 make a display of non-recognition of the transfer of
13 territories brought about by aggression, and dis-
14 approval of war, and it is feared that all efforts to
15 restore comity between Japan and the United States
16 might end in vain disputes on abstract principles.)
17 In discussing the 'Draft Understanding,' the Govern-
18 ment of the United States was indeed persistent in
19 insisting upon

20 "(a) preservation of the territorial integrity
21 and respect for the sovereign rights of both countries
22 and other countries;

23 "(b) supporting the principles of non-
24 interference in the domestic affairs of other

countries;

1 "(c) supporting the principle of equality,
2 including equality of commercial opportunity; and

3 "(d) not altering the present situation in the
4 Pacific except by peaceful measures.

5 "We countered this by proposing not to be-
6 come engrossed in disputes on abstract principles.
7 The first requisite, today, is to meet the actual
8 situation of Japanese-American relations properly,
9 confining to the minimum disputes on principles and
10 views of the world which the two nations embrace.
11 It may be difficult to settle, at a single stroke,
12 all the puzzling, complicated problems accumulated
13 between Japan and the United States with the lapse
14 of a long time, but once the course is set in the
15 direction of mutual understanding, the ill-feeling
16 between the two nations will gradually be dispelled
17 and friendly feelings brewed. Thus, it would be
18 possible to check, or convert, the attitudes of the
19 United States toward the present war, provided
20 that such a situation be realized as early as possible.
21 We sought a practical settlement, therefore, in the
22 full conviction that it is preferable, in the exist-
23 ing circumstances, to bend ourselves to obtaining
24 effectual results. And for this reason, we submit

1 the present report to Your Excellency, regardless
2 of repetition."

3 THE PRESIDENT: We will recess for fifteen
4 minutes.

5 (Whereupon, at 1445, a recess was
6 taken until 1500, after which the proceed-
7 ings were resumed as follows;)
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MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Major Blakeney.

MAJOR BLAKENEY: The result of the deliberations of the Japanese government and high command detailed by Prince KONO was the adoption and presentation to the United States Government of a counter-proposal, which was handed to Secretary Hull on 12 May and which has been introduced in evidence as Exhibit 1070, record page 9891. The next few documents will deal with some of the negotiations arising out of that proposal. And the first of these, defense document 1400-D-6, is an excerpt from Foreign Relations embodying parts of a conversation between Secretary Hull and Ambassador NOMURA of 16 May, which is offered in evidence.

THE PRESIDENT: Admitted on the usual terms.

THE CLERK: Defense document 1400-D-6 will receive Exhibit Number 2873.

(Whereupon the document above referred to was marked defense exhibit 2873 and received in evidence.)

MAJOR BLAKENEY: I will read the Exhibit:
"Washington, May 16, 1941. The Japanese Ambassador called at the Secretary's apartment by appointment made at the Secretary's request.

"In reply to a question by the Ambassador

1 as to whether the Secretary wished to imply that under
2 the American Government's interpretation of self-
3 defense the United States might become involved in
4 the European war even if its territory was not
5 attacked, the Secretary observed that if and as an
6 aggressor in the course of his aggression against
7 other countries makes manifest a purpose of unlim-
8 ited conquest it is necessary for other countries to
9 take appropriate measures of self-protection and
10 self-defense. Our policy of assistance to Great
11 Britain was an illustration of the kind of measures
12 which he meant. As to what other action this Govern-
13 ment might take, this would depend upon what the mil-
14 itary authorities of this Government would deem
15 essential to our protection and self-defense in any
16 given circumstances.
17

18 "The Ambassador said that it went without
19 saying that Japan desired only peaceful relations
20 with the United States, but that at the same time
21 Japan might be faced with the question of carrying
22 out in good faith any obligations it might be called
23 upon to perform under Article III of the Axis Alli-
24 ance. The Secretary said that in his opinion the
25 explanatory statement, consisting chiefly of excerpts
from an address he had made some three weeks ago,

would make the attitude of this Government on the
matter of self-defense very clear. The Secretary
said that he felt that the Japanese would feel the
same way as we do under similar circumstances. He
referred to the suggestions which we had offered as
a formula under Section II of the Japanese proposal
in regard to relations of the United States and Japan
to the European war as defining our respective rela-
tions clearly.

"The Ambassador said that it was the earnest
hope of Japan that the Government of the United States
would find itself able at the earliest possible moment
to request the Chinese Government to enter into
negotiations with Japan for a peace settlement. He
expressed the hope that there would be no dilatory
tactics on the part of the Chinese.

"The Secretary observed that if we could
dispose of these two points which had been brought
up in a preliminary way no reason was perceived why
we could not then proceed rapidly with consideration
of the proposal as a whole.

"There was some discussion of the questions
of joint defense against communism and the recogni-
tion of Manchuria. The Secretary indicated that if
China and Japan could agree on the other points

1 listed in the Japanese "Annex and Explanation"
2 he did not believe that difficulties which might
3 arise over these two points would be such as to
4 prevent an agreement between China and Japan.

5 "The Secretary referred briefly to the
6 reciprocal feature of our suggested redraft of
7 Section V of the Japanese proposal, which relates
8 to the economic activity of the Southwest Pacific
9 area, and expressed the hope that subsequently
10 other countries could be brought in. He alluded in
11 this connection to the fact that the benefits of our
12 trade program in South America are enjoyed by all
13 nations."

14 The oral statement handed by Secretary
15 Hull to Ambassador NOMURA on 16 May is offered in
16 evidence as defense document 1400-E-6.

17 THE PRESIDENT: Admitted on the usual terms.

18 THE CLERK: Defense Document 1400-E-6 will
19 receive Exhibit Number 2874.

20 MAJOR BLAKENEY: The oral statement is as
21 follows:

22 "Informal and Unofficial Oral Statement
23 Handed by the Secretary of State to the Japanese
24 Ambassador (NOMURA) on May 16, 1941.
25 "There has not yet been time to study care-

1 fully the proposal which the Ambassador has present-
2 ed under instructions from his Government. From such
3 examination as it has been possible to make, however,
4 certain preliminary comments suggest themselves.

5 "It is understood that the purpose of the
6 present discussions and of the proposal presented by
7 the Japanese Ambassador is to work out a formula
8 whereunder Japan and the United States may make
9 manifest their common desire and definite purpose
10 to refrain from any aggressive act by force and to
11 pledge themselves in honor and in act to maintain
12 and preserve peace in the Pacific area.

13 "Keeping in mind this admirable objective,
14 it would seem advisable to dispose of certain funda-
15 mental points before attempting to consider the
16 Japanese proposal as a whole.

17 "With reference to the proposed formula in
18 Section II in regard to the relations of Japan and
19 of the United States toward the European war, the
20 United States is, as the Ambassador is aware, engaged
21 in an extensive program of strengthening its national
22 defense, and it regards as an essential part of its
23 program of self-defense aid to Great Britain and to
24 other countries which are resisting the present world-
25 wide movement of conquest and aggression by force.

1 There is annexed a statement which defines clearly
2 the position of the Government of the United States
3 on this subject. The Japanese Government will nat-
4 urally wish to give careful consideration to the po-
5 sition of the Government of the United States as set
6 forth in the statement.

7 "It is believed that on the basis of the
8 fundamental purpose of pledging themselves in honor
9 and in act to refrain from any aggressive act by force
10 and to maintain and preserve peace in the Pacific area
11 a mutually satisfactory formula defining the relations
12 of the United States and of Japan toward the European
13 war can be arrived at.

14 "In the light of the foregoing, there are
15 offered for the Ambassador's consideration certain
16 suggestions for possible revision of Section II of
17 the proposal.

18 "With reference to the proposed formula in
19 Section III in regard to the relations of the United
20 States and of Japan toward the China Affair, it is
21 noted that in the "Annex and Explanation" it is
22 stated that in Section III of the proposal there
23 are exemplified principles of neighborly friendship;
24 joint defense against communism; economic cooperation
25

1 free from economic monopoly or limitation of the
2 interests of other countries; mutual respect of
3 sovereignty and territories; mutual respect for
4 the inherent characteristics of each nation cooper-
5 ating as good neighbors and forming a Far Eastern
6 nucleus contributing to world peace; withdrawal of
7 Japanese troops from Chinese territory in accord-
8 ance with an agreement to be concluded between
9 Japan and China; no annexation and no indemnities;
10 and the independence of Manchuria. While one or two
11 of the points might present difficulties, it is
12 believed that, if China and Japan could come to
13 agreement on the basis of the other points mentioned,
14 the remaining points with some modification need
15 not present insuperable obstacles.

16 "The principles embodied in the KONO Statement
17 as defined in the "Annex and Explanation" as
18 relating to neighborly friendship, joint defense
19 against communism, and economic cooperation free from
20 economic monopoly or limitation of the interests
21 of other countries, could, with some modification,
22 it is believed, be acceptable."

23 "Annex 1.

24 "Extracts From Address by the Secretary
25 of State on April 24, 1941, Handed to the Japanese

Ambassador on May 16, 1941.

1 ". . . Events have shown beyond possible
2 question that the safety of this hemisphere and of
3 this country calls for resistance wherever resist-
4 ance will be most effective."

5 "The foregoing statements make it clear
6 that the attitude of the Government of the United
7 States is one of resolve to take measures of self-
8 defense in resistance to a movement, which, as has
9 been made unequivocally clear by the acts and utter-
10 ances of Hitler, is directed to world conquest by
11 force from which no country and no area are excepted.
12 This attitude is based upon a most fundamental con-
13 sideration -- that of the inalienable right of
14 self-defense."

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1 Another excerpt from Foreign Relations,
2 being part of a memorandum of the conversation be-
3 tween Secretary Hull and the Japanese Ambassador on
4 20 May, is offered in evidence as defense document
5 1400-F-6.

6 THE PRESIDENT: Admitted on the usual terms.

7 CLERK OF THE COURT: Defense document 1400-F-6
8 will receive exhibit No. 2875.

9 (Whereupon, the document above referred
10 to was marked defense exhibit 2875 and received
11 in evidence.)

12 MR. BLAKENEY: This excerpt, the purpose of
13 which is to show early American understanding of the
14 grounds on which Japan required the right of station-
15 ing troops in China, I read:

16 ""Washington, May 20, 1941.

17 "The Japanese Ambassador, accompanied by
18 Colonel IWAKURO and Mr. WIKAWA, was received by the
19 Secretary at his apartment at 8:30 this evening by
20 arrangement at the suggestion of the Japanese Ambassa-
21 dor.

22 "The Secretary then observed that there were
23 two points in regard to the section dealing with China
24 which he would like to bring up. One was in regard to
25 the joint defense against communism and the other was

1 in regard to the stationing of Japanese troops in
2 certain parts of Chinese territory. He said that he
3 was not discussing the merits of the two points to
4 which he referred, but he felt that if and when this
5 Government should approach Chiang Kai-shek on the
6 matter of negotiating with Japan he would have to tell
7 Chiang the basis on which Japan would propose to ne-
8 gotiate; that this basis should be one on which Chiang
9 could carry his country with him; and that if the
10 Chinese Government should be unwilling to proceed with
11 negotiations on the basis proposed the Secretary would
12 be in a very embarrassing position. He therefore
13 wished to ask whether it would not be possible to
14 cover these two points under some broader provision,
15 such as a provision which would call for special
16 measures of protection for Japanese nationals and
17 property interests against lawlessness in areas where
18 special measures for safeguarding the rights and
19 interests of nationals of third powers were necessary."

20
21 Another conversation was held between Secre-
22 tary and Ambassador on 28 May. Excerpts from the record
23 of this meeting are already in evidence as Exhibit 1077,
24 to which I refer in connection with the fact that it
25 was made clear to the Secretary of State that in Japan
 the Foreign Minister does not bear the entire respon-

sibility for matters of foreign policy. Additional

1 selections from the conversation are offered in de-
2 fense document 1400-G-6, an excerpt from Foreign
3 Relations.

4 THE PRESIDENT: Admitted on the usual terms.

5 CLERK OF THE COURT: Defense document
6 1400-G-6 is missing from our order of proof.

7 THE PRESIDENT: We have it in our order of
8 proof.

9 CLERK OF THE COURT: We don't have the docu-
10 ment.

11 MR. BLAKENEY: I will have to pass that for
12 the time being.

13 Referring again for a moment to Exhibit 1077,
14 the conversation of 28 May, it will be remembered
15 that, as shown therein, Secretary Hull called the atten-
16 tion of the Japanese Ambassador to the speech delivered
17 the preceding evening by President Roosevelt as illus-
18 trative of the United States' position on the ques-
19 tion of the right of self-defence. Excerpts from
20 that speech, taken from the State Department publica-
21 tion Peace and War, are offered in evidence as defense
22 document 1967.

23 THE PRESIDENT: Admitted on the usual terms.

24 CLERK OF THE COURT: Defense document 1967
25 will receive exhibit No. 2876.

(Whereupon, the document above referred

1 to was marked defense exhibit 2876 and received
2 in evidence.)
3

MR. BLAKENEY: I read the excerpts.

"Radio Address Delivered by President Roose-
4 velt from Washington May 27, 1941.
5

* * * *

"In September 1940 an agreement was com-
7 pleted with Great Britain for the trade of 50 destroy-
8 ers for eight important off-shore bases."
9

* * * *

11 "I have said on many occasions that the United
12 States is mustering its men and its resources only
13 for the purpose of defense--only to repel attack. I
14 repeat that statement now. But we must be realistic
15 when we use the word 'attack'; we have to relate it to
16 the lightning speed of modern warfare."
17

* * * *

18 "First, we shall actively resist wherever
19 necessary, and with all our resources, every attempt
20 by Hitler to extend his Nazi domination to the Western
21 Hemisphere, or to threaten it. We shall actively re-
22 sist his every attempt to gain control of the seas.
23 We insist upon the vital importance of keeping Hitler-
24 ism away from any point in the world which could be
25 used and would be used as a base of attack against the

1 Americas."

2 * * * *

3 " We in the Americas will decide for ourselves
4 whether and when and where our American interests are
5 attacked or our security threatened.

6 " "We are placing our armed forces in strategic
7 military position.

8 " "We will not hesitate to use our armed forces
9 to repel attack."

10 * * * *

11 " Therefore, with profound consciousness of my
12 responsibilities to my countrymen and to my country's
13 cause, I have tonight issued a proclamation that an
14 unlimited national emergency exists and requires the
15 strengthening of our defense to the extreme limit of
16 our national power and authority."

17 On 31 May the United States Government handed
18 to the Japanese Ambassador its counter-proposal,
19 exhibit 1078, and various oral statements and other
20 explanations, a number of which are in evidence here,
21 were exchanged. I wish to offer in evidence only one
22 excerpt from a record of a conversation, defense docu-
23 ment 1400-H-6, an excerpt from Foreign Relations relat-
24 ing to the conversation of 17 June between the assis-
25 tants of the Secretary of State and the Japanese

1 Ambassador.

2 THE PRESIDENT: Admitted on the usual terms.

3 CLERK OF THE COURT: Defense document 1967
4 will receive exhibit No. 2876.

5 THE PRESIDENT: Defense document 1400-H-6
6 was tendered then.

7 CLERK OF THE COURT: We have no copy of this
8 1400-H-6.

9 MR. BLAKENEY: I will have to pass it, then,
10 for the time being.

11 CLERK OF THE COURT: I have just been in-
12 formed by my office that defense document 1400-H-6
13 is already an exhibit, No. 2819.

14 MR. BLAKENEY: Well, that is news to me.

15 I might mention briefly the purpose for which
16 I had the document prepared, and that is specifically
17 in connection with the last paragraph thereof, to show
18 one attempt by the Japanese representatives to satisfy
19 the American demand in connection with the Tripartite
20 Pact question.

21 I now pass to defense document 1500-W-5. The
22 continuous negotiations in Washington resulted in the
23 United States Government's producing in its turn, on
24 21 June, another revised draft of understanding, which
25 is in evidence as exhibit 1092, record page 10,004.

1 Simultaneously, the Japanese-American negotiations were
2 receiving equally arduous study in Tokyo, especially
3 after the failure of the commercial negotiations with
4 the Netherlands East Indies on 17 June (exhibit 1309-A,
5 record page 11,717) and the outbreak of the Russo-Ger-
6 man war on the 22nd. In connection with this, I offer
7 in evidence an additional excerpt from the KONOUE
8 memoirs, defense document 1500-W-5.

9 THE PRESIDENT: Admitted on the usual terms.

10 CLERK OF THE COURT: Defense document 1500-W-5
11 will receive exhibit No. 2877.

12 (Whereupon, the document above referred
13 to was marked defense exhibit 2877 and received
14 in evidence.)

15 MR. BLAKENEY: I read from exhibit 2,877,
16 the first three paragraphs.

17 "While the complicated and prolonged diplo-
18 matic negotiations were being conducted between Tokyo
19 and Washington, in Tokyo itself a question of special
20 significance was being deliberated upon by the cabinet.
21 The question was whether to continue negotiations in-
22 definitely with America, or whether to break them off
23 abruptly. And more important still, they were con-
24 sidering whether war with America would follow upon
25 the heels of the breaking off of negotiations.

"The diplomatic negotiations for establishing

1 a better American-Japanese understanding were being
2 participated in by only the highest leaders of the
3 Government, Army, Navy, and the Supreme Command.
4 They were progressing to the absolute exclusion of
5 lesser officials. With the sole exception of Foreign
6 Minister MATSUOKA, all the leading participants were
7 hoping for the success of the negotiations, and for this
8 very reason they were conducting it in absolute secre-
9 cy lest it encounter opposition.

10 "Nevertheless, news began to leak out, par-
11 ticularly as a result of Foreign Minister MATSUOKA's
12 secret reports to the German and Italian Ambassadors.
13 As they began to perceive the general outline of the
14 negotiations, the lesser officials began to give evi-
15 dence of their disapproval. The Army in particular
16 stiffened in its opposition. Just at this moment the
17 German-Soviet war suddenly broke out. Though the
18 governmental leaders were able to set aside the in-
19 sistent demands for an immediate war against the Soviets,
20 they were obliged to decide upon the armed occupation
21 of French Indo-China as a sort of consolation prize.
22 At the same time, in order to be prepared for any
23 emergency, they proceeded with full-scale preparations
24 for a possible war against England and America.
25 Though it was no easy task, the division between

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1 I read only so far at this time.
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3 The policy of Japan, referred to by Prince
4 KONO, vis-a-vis the USSR and Indo-China, is ex-
5 pressed in the decisions of the Liaison Conference
6 of 25 June, exhibit 1306, record, page 11,753, and the
7 Imperial Conference of 2 July, exhibit 588, record,
page 6,566.

8 The next of the Washington conversations
9 of which I wish to offer evidence is that of 2 July
10 between Mr. Hamilton and others for the United
11 States and Mr. WIKAWA and others for Japan. The
12 excerpt from "Foreign Relations," defense document
13 1400-I-6, is offered in evidence to show that
14 secrecy was being observed in both countries con-
15 cerning the negotiations, and as well the United
16 States position toward the Tripartite Pact.

17 THE PRESIDENT: Admitted on the usual terms.
18

19 CLERK OF THE COURT: Defense document 1400-
I-6 will receive exhibit No. 2878.
20

21 (Whereupon, the document above
22 referred to was marked defense exhibit
23 No. 2878, and received in evidence.)
24

25 MR. BLAKENEY: I read the document:
"Washington, July 2, 1941. -- Mr. Ballantine
and Mr. Schmidt, who were later joined by

1 preparation for war and the war itself had to be firmly
2 borne in mind. As preparations for war progressed,
3 opposition to American-Japanese negotiations became
4 more vociferous."

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I read only so far at this time.

The policy of Japan, referred to by Prince KONO, vis-a-vis the USSR and Indo-China, is expressed in the decisions of the Liaison Conference of 25 June, exhibit 1306, record, page 11,753, and the Imperial Conference of 2 July, exhibit 588, record, page 6,566.

The next of the Washington conversations of which I wish to offer evidence is that of 2 July between Mr. Hamilton and others for the United States and Mr. WIKAWA and others for Japan. The excerpt from "Foreign Relations," defense document 1400-I-6, is offered in evidence to show that secrecy was being observed in both countries concerning the negotiations, and as well the United States position toward the Tripartite Pact.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1400-I-6 will receive exhibit No. 2878.

(Whereupon, the document above referred to was marked defense exhibit No. 2878, and received in evidence.)

MR. BLAKENEY: I read the document:
"Washington, July 2, 1941. -- Mr. Ballantine
and Mr. Schmidt, who were later joined by

1 Mr. Hamilton, called at the apartment of Colonel
2 IWAKURO and Mr. WIKAWA by arrangement following
3 an intimation that the Japanese would like to meet
4 us for further discussion."

5 MR. TAVENNER: If the Tribunal please,
6 may I be permitted to interrupt?

7 THE PRESIDENT: Mr. Tavenner.

8 MR. TAVENNER: This document was intro-
9 duced formerly. The exhibit number I do not have
10 before me.

11 I desire to apologize to the Tribunal;
12 I have the wrong document.

13 THE PRESIDENT. It is very easy to make a
14 mistake in these matters.

15 MR. BLAKENEY: It is, indeed.

16 Continuing: "Mr. WIKAWA said these con-
17 versations were being kept very secret in Japan owing
18 to the opposition which could be expected from third
19 countries and from certain groups in Japan. Mr.
20 MATSUOKA's statements and the statements of other
21 individuals were often largely for home consumption.

22 "Mr. Hamilton replied that these conversa-
23 tions were also kept very secret here; and brought to
24 Mr. WIKAWA's attention the fact that the President
25 and the Secretary of State in the administration of

1 matters of policy were able at times judiciously
2 to apply the brakes. It seems to us, Mr. Hamilton
3 said, the Japanese Government, if it so desired,
4 could pursue a similar course to indicate more
5 clearly that Japan is now committed to a peaceful
6 policy. He added that we do not expect the
7 impossible, of course, and do not ask Japan to
8 repudiate contractual obligations."

9 Ambassador NOMURA's conversation with
10 State Department officials on 5 July shows the
11 Japanese concern with what was considered the
12 threat to Japan from ABCD encirclement; defense
13 document 1400-J-6, which is offered in evidence.

14 THE PRESIDENT: Admitted on the usual
15 terms.

16 CLERK OF THE COURT: Defense document
17 1400-J-6 will receive exhibit No. 2879.

18 (Whereupon, the document above
19 referred to was marked defense Exhibit No. 2879
20 and received in evidence.)

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1 MR. BLAKENEY: I read the exhibit:
2 "Washington, July 5, 1941.
3 "The Secretary having directed that Mr.
4 Hamilton and Mr. Ballantine endeavor to see the
5 associates of the Japanese Ambassador, Mr. Hamilton
6 and Mr. Ballantine ascertained that Mr. WIKAWA was
7 out of town, and, as Colonel IWAKURO does not speak
8 English, after consulting Mr. Welles, made an appoint-
9 ment to see the Japanese Ambassador.

10 "Mr. Hamilton said that a third point which
11 he wished to bring up related to press reports to the
12 effect that Japan was planning to acquire naval and
13 air bases in French Indo-China and Thailand to enable
14 Japan to threaten the Burma Road, Singapore, and the
15 Dutch East Indies. Mr. Hamilton read to the Ambassador
16 a press clipping from the New York Times of this morning
17 containing a press despatch from Shanghai on the sub-
18 ject (attached). He asked the Ambassador how does the
19 Japanese Government expect to go forward with a peace
20 settlement for the Pacific area while reports indicated
21 that Japan is moving in exactly the opposite direction?
22 Mr. Hamilton suggested that it would be advantageous
23 at this juncture to have either a prompt denial or
24 frank confirmation of those reports.

25 "The Ambassador replied that the Japanese

1 Government was faced with the necessity of preparing
2 itself against possible eventualities. He observed
3 that one had only to take up the paper to read sugges-
4 tions by commentators in the United States on plans
5 for the encirclement of Japan; that America was aiding
6 Chiang Kai-shek in various ways, including the des-
7 patch of American pilots to Chungking; that American
8 supplies were being sent to Malaya and the Nether-
9 lands East Indies; that there were visits of American
10 squadrons to Australia which to a naval man like him-
11 self were of greater significance than mere courtesy
12 visits; and that commentators were discussing the
13 prospects of American aid to the Russian Far East
14 and of the acquisition of American air bases in
15 Siberia. He alluded also to the possibility of an
16 executive order being issued stopping the shipment
17 from the United States of petroleum products to
18 Japan, and he remarked that, if Japan should thus be
19 shut off from American sources of oil, Japan must
20 obtain them elsewhere and that, under the circum-
21 stances, it was necessary for Japan to take appro-
22 priate preparatory measures."

23 In accordance with the Imperial Conference
24 decision of 2 July, Japan entered into an agreement
25 with the Government of France for joint defense of

Indo-China (exhibits 647-A, record, page 7,058 and
1 651, record, page 7,079). The Tribunal will be re-
2 quested to take judicial notice that the government
3 located at Vichy was the de jure and de facto government
4 of France at the time, and that the United States and
5 other Allied nations maintained diplomatic relations
6 with that government. The advance of Japanese troops
7 into Southern French Indo-China by virtue of this
8 agreement for joint defense was followed by action of
9 the Governments of the United States, Great Britain
10 and the Netherlands freezing Japanese assets (exhibit
11 67, record, page 513). To show that there was evidence
12 of the intention of the United States to take such
13 action as early as 2 July, I offer in evidence defense
14 document 1400-A-8, an excerpt from the record in
15 Foreign Relations of a conversation of that date
16 between Japanese and American diplomats in Washington.
17

18 THE PRESIDENT: Admitted on the usual terms.

19 Mr. Tavenner.

20 MR. TAVENNER: If the Tribunal please, this
21 is the same document as defense document 1400-I-3
22 which was rejected at page 25,301 of the record.

23 THE PRESIDENT: I did not see you at the
24 lectern when it was admitted so the decision is re-
25 voked for the time being.

1 CLERK OF THE COURT: Defense document 1400--

2 THE PRESIDENT: No, I want it argued.

3 It has already been rejected, you say?

4 MR. TAVENNER: Yes.

5 If it please the Tribunal, I have nothing
6 more to say in regard to it, it having been rejected
7 very recently. There is no greater ground for its
8 being admissible now than it was then.

9 MR. BLAKENEY: I know nothing about the
10 purpose for which the document has heretofore been
11 tendered, nor the objection then made to it, nor the
12 basis of the ruling.

13 THE PRESIDENT: You had better withdraw it for
14 the time being.

15 MR. BLAKENEY: I am ready to go ahead and
16 state why I think it admissible in this connection.

17 I merely wanted to say that I was not, of
18 course, aware that it had been separately processed
19 or I shouldn't have used paper making another copy.

20 The United States' imposition of petroleum
21 embargo and order freezing Japanese assets has been
22 stated in evidence to have been the result of the
23 Japanese movement of troops into Southern Indo-China.
24 I refer in this connection to the testimony of the
25 witness Ballantine where the statement will be found

1 in paragraph 4 of page 10 of the original document
2 to that effect. As against that statement I am
3 offering by this document to show that as much as
4 three weeks prior to the date of the freezing of
5 assets it had come to the attention of the Japanese
6 officials that such a movement was under contemplation
7 and in this connection it should be of interest to
8 note that as disclosed by exhibit 2879 the first
9 suggestion made by the Department of State of a rumored
10 Japanese move into Indo-China was on the 5th of July,
11 or three days thereafter. In those circumstances I
12 submit that this record of the remarks of the Japanese
13 representatives to the State Department officials
14 has relevance in enabling us to test the question of
15 the reason for the freezing of Japanese assets.

16 THE PRESIDENT: I think you ought to be
17 heard again, Mr. Tavenner, because this was pressed
18 and rejected on other grounds previously.

19 MR. TAVENNER: I was just about, if your
20 Honor please, to read the objection made by Brigadier
21 Quilliam to the introduction of this document: "In
22 our submission this document is quite immaterial.
23 Apparently all it consists of is an unsupported charge
24 by Mr. WIKAWA against a private financial firm which
25 acts as agent for the Japanese government."

1 THE PRESIDENT: It was rejected on the
2 ground that Morgan & Company were not identified
3 with the United States and the charge against them
4 was a purely collateral matter.

5 MR. TAVENNER: That is correct, sir.

6 MR. BLAKENEY: Now that I have seen the
7 record I would like to point out that the objection
8 made at that time and renewed now is a complete mis-
9 statement of the contents of the document.

10 THE PRESIDENT: In view of what we have
11 heard this afternoon without objection about the
12 part played by some of these people, it has been
13 well put by a colleague that this may be regarded as
14 a step in diplomatic talks and admitted.

15 MR. BLAKENEY: I might additionally point
16 out that so far from this constituting a charge against
17 the firm of Morgan & Company it is a statement given
18 on the authority of Morgan & Company as having emanated
19 from the State Department itself.

20 MR. TAVENNER: I would like to point out,
21 if your Honor please, that the crux of the matter
22 seems to be that the freezing of Japanese funds was
23 to be expected in the near future. They had not yet
24 occurred.

25 MR. BLAKENEY: And from the record, the

ostensible reason for the freezing of assets, the
1 move into Southern Indo-China, was not yet expected.

2 MR. TAVENNER: And I would also like to
3 point out in connection with that last statement
4 by my friend that Brigadier Quilliam asserted in his
5 objection that there was a lot of evidence that Japan
6 intended to go into French Indo-China before she
7 actually did.

8 MR. BLAKENEY: Nothing was further from
9 my thoughts than to misquote the record but I believe
10 it stands as I said.

11 THE PRESIDENT: By a majority the objection
12 is overruled and the document admitted on the usual
13 terms.

14 CLERK OF THE COURT: Defense document 1400-A-8
15 will receive exhibit No. 2880.

16 (Whereupon, the document above
17 referred to was marked defense exhibit
18 No. 2880 and received in evidence.)

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1 MR. BLAKENEY: I read the document:
2 "Washington, July 2, 1941. -- Mr. Ballan-
3 tine and Mr. Schmidt, who were later joined by Mr.
4 Hamilton, called at the apartment of Colonel
5 IWAKURO and Mr. WIKAWA by arrangement following
6 an intimation that the Japanese would like to meet
7 us for further discussion.

8 "In a plea for mutual confidence, Mr.
9 WIKAWA stated that he had learned recently that the
10 banking firm of Morgan and Company in New York,
11 which had control of a Japanese sinking fund to
12 purchase Japanese Government bonds at a price
13 favorable to Japan, had learned from sources within
14 the State Department that these conversations had
15 been very politely but firmly and on technical
16 grounds closed by the United States and that the
17 freezing of Japanese funds in the United States
18 could be expected in the near future. Morgan and
19 Company had accordingly begun the purchase of
20 Japanese Government bonds indiscriminately and had
21 forced the price of those bonds to rise con-
22 siderably to the detriment of the Japanese Govern-
23 ment's sinking fund."

25 I understand that document 1400-H-6 has
now arrived, and I therefore renew the tender,

1 the offer of this excerpt from "Foreign Relations"
2 relating to the conversation of 17 June between the
3 assistants of the Secretary of State and the Japan-
4 ese Ambassador.

5 THE PRESIDENT: Admitted on the usual
6 terms.

7 CLERK OF THE COURT: Defense document
8 1400-H-6 will receive exhibit No. 2881.

9 (Whereupon, the document above
10 referred to was marked defense exhibit
11 No. 2881, and received in evidence.)

12 MR. BLAKENEY: I read the document to show
13 the Japanese position concerning the Tripartite
14 Pact, and as evidence that there were three main
15 outstanding questions:

16 "Washington, June 17, 1941. -- Conformably
17 with an arrangement made earlier in the day, Mr.
18 Hamilton, Mr. Ballantine and Mr. Schmidt met with
19 Colonel IWAKURO and Mr. WIKAWA at the latter's
20 apartment.

21 "Colonel IWAKURO discussed at some length
22 the deterioration of relations between the United
23 States and Japan and the division of opinion in
24 Japanese circles which had preceded the conclusion
25 of the Tripartite Pact. The attitude of the United

1 States, Colonel IWAKURO said, had left to Japan
2 no other course than to sign the Tripartite Pact.
3 For this reason, he said, it was most desirable
4 that an improvement in American-Japanese relations
5 be accomplished before taking up the considera-
6 tion of such detailed controversial issues. He
7 stated emphatically that Japan cannot at this time
8 repudiate the Tripartite Alliance. He felt that
9 once 'good feeling' had been restored, other
10 differences would be satisfactorily ironed out.
11

12 "The Japanese urged that discussions
13 be carried on with all possible speed and asked when
14 they could telegraph Tokyo. Mr. Hamilton pointed
15 out that there were outstanding three large ques-
16 tions: economic non-discrimination in China,
17 stationing of Japanese troops in China, attitude
18 of the two governments toward the European war, and
19 added that the question of a statement regarding
20 military bases presented an additional serious
21 question."

22 THE PRESIDENT: We will adjourn until
23 half-past nine tomorrow morning.

24 (Whereupon, at 1600, an adjourn-
25 ment was taken until Thursday, 14 August
1947, at 0930.)

- - - -

NOTE:

The attached pages are corrected
pages and should be substituted for the
corresponding pages in the record.

2 another effort to remove misunderstanding. These
3 instructions, as contained in Foreign Relations, are
4 offered in evidence as defense document 1400-R-6.

5 THE PRESIDENT: Admitted on the usual terms.

6 CLERK OF THE COURT: Defense document
7 1400-R-6 will receive exhibit No. 2899.

8 (Whereupon, the document above
9 referred to was marked defense exhibit
10 2899 and received in evidence.)

11 MR. BLAKENEY: I read the document.

12 "Proposed Instructions to the Japanese
13 Ambassador (NOMURA), handed by the Japanese Minister
14 for Foreign Affairs (TOYODA) to the American Ambassador
15 in Japan (Grew) on September 13, 1941.

16 "I. (a) The proposed draft of an understand-
17 ing which has been constituting a basis for informal
18 negotiations between the Japanese and the United States
19 Governments will continue to be a basis for further
20 discussions.

21 "The points upon which we deem a tentative
22 agreement has already been reached during the informal
23 preliminary conversations in Washington comprise the
24 preamble to the proposed understanding, the concepts
25 of the United States and of Japan respecting

1 instructions being sent to Ambassador NOMURA, in
2 another effort to remove misunderstanding. These
3 instructions, as contained in Foreign Relations, are
4 offered in evidence as defense document 1400-R-6.

5 THE PRESIDENT: Admitted on the usual terms.

6 CLERK OF THE COURT: Defense document
7 1400-R-6 will receive exhibit No. 2899.

8 (Whereupon, the document above
9 referred to was marked defense exhibit
10 2899 and received in evidence.)

11 MR. BLAKENEY: I read the document.

12 "Proposed Instructions to the Japanese
13 Ambassador (NOMURA), handed by the Japanese Minister
14 for Foreign Affairs (TOYODA) to the American Ambassador
15 in Japan (Grew) on September 13, 1941.

16 "I. (a) The proposed draft of an understand-
17 ing which has been constituting a basis for informal
18 negotiations between the Japanese and the United States
19 Governments will continue to be a basis for further
20 discussions.

21 "The points upon which we deem a tentative
22 agreement has already been reached during the informal
23 preliminary conversations in Washington comprise the
24 preamble to the proposed understanding, the concepts
25 of the United States and of Japan respecting

1 doing it voluntarily and they should--

2 THE PRESIDENT: It is not a case of just
3 tendering the sweet and rejecting the bitter. You
4 did that in the prosecution. They are tendering the
5 sweet and the bitter, I take it, but they say the
6 bitter does not apply to the other accused.

7 MR. TAVENNER: That, we submit, is identically
8 the same thing as rejecting the bitter.

9 MR. BLAKENEY: I might suggest that the
10 question raised by Mr. Tavenner can in this instance
11 be disposed of on two much narrower grounds.

12 THE PRESIDENT: I should remind you we are
13 not bound by any technical rules of evidence but we
14 have applied them. We do not get away from them
15 without due consideration. The interests of justice
16 require us to adhere to them sometimes.

17 MR. BLAKENEY: One of the grounds which I
18 referred to might be characterized as a technical
19 rule of evidence; the other is one of those rules
20 heretofore acted upon by the Tribunal in substitution
21 for technical rules of evidence. To deal with the
22 latter point first, it is that the excerpts here being
23 tendered from the interrogation of General TOJO relate
24 to the same subject matter as that of excerpts here-
25 tofore tendered by the prosecution, and I refer to

1 prosecution be entitled to receive the benefit
2 of all inferences or any contradictory statements
3 that may be contained in it, with reference to the
4 subject matter presented.

5 THE PRESIDENT: That suggests to me that
6 the question is premature. The only question now
7 is what evidence is admissible and what is not.
8 The extent to which it can be used is a matter to
9 be dealt with in summation. Individual defense
10 counsel may rise, of course, and say "That is
11 not evidence against my client." We will have to
12 hear him.

13 I say the point is prematurely raised by
14 the prosecution, but I do concede that individual
15 defense counsel can arise in his place and claim
16 that the evidence is not admissible against his
17 client, but I recollect that Major Blakeney is
18 claiming to put this on behalf of all the accused.

19 MR. TAVENNER: If it please the Tribunal,
20 I have not objected to the introduction of the docu-
21 ment. I only considered it to be a fair matter to
22 all concerned that we make known now what our con-
23 tention would be with regard to this evidence. If
24 it is considered premature, I will have nothing more
25 to say about it.

1 and I must point out to the Tribunal that I have
2 failed to comply wholly with the rule for service of
3 affidavits. However, I am advised by the prosecution
4 that they will have no objection to waiving the rule
5 to the extent of permitting me to put the witness on
6 the stand, they to reserve their objections both to
7 the affidavit and to the documents until the 24-hour
8 period to which they are entitled has elapsed.

9 Mr. Tavenner tells me he is mistaken. He
10 doesn't wish to make any reservation; he is prepared
11 to go ahead.

12 Of course the Tribunal also has not had the
13 document for the required period of three days, but
14 I believe in the circumstances it will find no diffi-
15 culty in permitting me to go ahead.
16

17 THE PRESIDENT: There is no desire on the
18 part of the Tribunal to prevent you from proceeding.
19

20 MR. BLAKENEY: I therefore call as a witness
21 YAMAMOTO Kumaichi, whose testimony is embodied in his
affidavit, defense document 2014.
22
23
24
25

YAMAMOTO

25,874-1/2

YAMAMOTO KUMAICHI, recalled as a witness on behalf of the defense, having been previously sworn, testified through Japanese interpreters as follows:

THE PRESIDENT: You are still on your former oath, Witness.

Mr. Brannon.

MR. BRANNON: If the Tribunal please, I have been instructed by the accused former Admiral SHIMADA and OKA to inform the Tribunal that they strongly

1 differ with certain statements contained in defense
2 document 2014, the affidavit of YAMAMOTO Kumaichi,
3 about to be read. Therefore, they do not wish the
4 Tribunal to consider this testimony as offered in their
5 behalf, even though it appears in a general phase.

6 THE PRESIDENT: Mr. Tavener.

7 MR. TAVENER: If the Tribunal please, when
8 an affidavit is produced and entered in evidence in a
9 general phase, I would take it that it would be evi-
10 dence for all of them unless counsel for a particular
11 accused points out by cross-examination wherein he
12 differs with the assertions of the witness. If that
13 isn't done, then I think the evidence should be reser-
14 ved until the individual phase of the case is reached.

15 THE PRESIDENT: We understand that the evidence
16 given in the general phase is the evidence for all the
17 accused.

18 MR. BRANNON: If the Tribunal please, we do
19 not wish to be placed in the position of having to
20 accept the testimony of any one witness as our evi-
21 dence.

22 THE PRESIDENT: We must reconsider how far
23 we are going allow this evidence on behalf of some
24 to be tendered in the general phase.

25 MR. BRANNON: We simply don't want to be in
the position of impeaching our own evidence later on

1 in the individual phase. Therefore we inform the
2 Tribunal now that we do not adhere to this evidence.
3

4 THE PRESIDENT: Major Blakeney, if you per-
5 sist in offering this evidence in the general phase,
6 we would like to hear you shortly on the reason why it
7 should be accepted at this stage.

8 MR. BLAKENEY: Mr. Brooks would like to say
9 a word first, if agreeable.

10 MR. BROOKS: It has been my understanding,
11 and I believe the understanding of most of the defense
12 attorneys, that the evidence put in in the general
13 phase was general evidence affecting most of the accused
14 not all of them, because there have been no instances
15 that I recall where the majority of the evidence has
16 affected every accused. Some of them were not even --

17 THE PRESIDENT: I have stated the contrary
18 at least twice without hearing any dissent that I re-
19 collect.

20 MR. BROOKS: On particular pieces of evidence
21 when your Honor has spoken that has been true; but
22 there have been times when the accused in many instances
23 were retired from military and political life when
24 other bits of evidence went in that did not affect
25 them, either for or against.

THE PRESIDENT: The question could not arise

YAMAMOTO

as regards accused of that kind.

1 MR. BROOKS: Well, I have in mind one of my
2 accused in particular who was Governor General in
3 Korea at the time. He wasn't even in Japan at the
4 time, certainly not in any of these consultations.
5

6 THE PRESIDENT: If the evidence is neither
7 for him nor against him, I cannot see how any ques-
8 tion can arise.

9 MR. BROOKS: I was just meeting the proposi-
10 tion of the Court that this evidence was being put in
11 in his behalf, that it was to be used against him.
12 I haven't said anything because it doesn't affect him
13 one way or the other, and I thought the Court was con-
14 sidering that.

15 THE PRESIDENT: We are concerned with the
16 practical question, not the academic one.

17 We will recess for fifteen minutes.

18 (Whereupon, at 1445, a recess was
19 taken until 1505, after which the proceedings were
20 resumed as follows:)

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1 MR. BLAKENEY: The President then called for
2 a list of the names of those dissenting and was given
3 it.

4 On page 17,010:

5 "THE PRESIDENT: Proceed to read the opening,
6 Doctor KIYOSÉ, but be careful to omit any arguments
7 already put to the Tribunal.

8 "MR. TAVENNER: The prosecution desires to
9 reserve the right to object to any phases of the open-
10 ing statement at the conclusion thereof should they be
11 advised it is proper to do so."

12 THE PRESIDENT: Of course, if you call a
13 witness in a general phase and he happens to say some-
14 thing prejudicial to one of the accused, to say it un-
15 expectedly, you must have a right to cross-examine him
16 under the circumstances, and the rules give it to you.

17 MR. BLAKENEY: Yes, I was coming to the rules
18 in a moment's time. I might say now that the Charter,
19 in Article 9(d), gives the unrestricted right to the
20 defendants to cross-examine all witnesses not only if
21 they unexpectedly say something against the interest of
22 the defendants, and I was--

23 THE PRESIDENT: But it is put very pointedly
24 to me that if you are right you could call in the
25 general phase a witness with whom twenty-four out of

YAMAMOTO

twenty-five disagree.

1 MR. BLAKENEY: In considering this very
2 perplexing problem among ourselves, we have tried
3 to adopt a rule or practice of putting in evidence
4 only in cases when, let's say, all the defendants
5 agreed with as much as ninety-five per cent of the
6 evidence. We thought that was about the practical
7 limit. We had to recognize that these defendants,
8 many of whom have fought each other officially and
9 personally, would come to the point of differing
10 about the evidence to be adduced. In the present
11 case, for example, I think I am quite correct in
12 saying that the two defendants for whom Mr. Brannon
13 noted his reservation would agree to fully ninety or
14 ninety-five per cent of the content of this affidavit;
15 but the remaining five per cent thereof, to which all
16 other defendants so far as I know subscribe, represents
17 one of those fields of conflict of interests between
18 these two defendants and other defendants, and I want
19 the Tribunal to know that we have seen this problem,
20 we have considered it, and we have thought that in
21 the interests of efficiency and expedition it was far
22 better to present it in this way with the reservation
23 than to give the Tribunal an incomplete picture now
24 and require, perhaps, many defendants to adduce

1 similar evidence later. That was our intention. And
2 if I may say just another word. We went on the assumption
3 that the Tribunal, appreciating our difficulty in
4 this respect, had taken our view of the matter because
5 this has been presented, I think, as a reservation in
6 the opening statement of each phase prior to this one,
7 and I, personally, should have thought that the
8 supplementary rules concerning cross-examination
9 lately adopted by the Tribunal were designed to solve
10 or to get us out of this sort of dilemma.

11 THE PRESIDENT: When I explain the need for
12 such a rule you may show that it is wider than I
13 suggest.

14 MR. BLAKENEY: In view of the rather considerable importance of this question, and since I
15 had only ten minutes to look it up, I wonder if the
16 Tribunal would hear another counsel who has indicated
17 that he would like to say a word on the subject. That
18 is all I have to say.
19

20 THE PRESIDENT: Perhaps that is all that can
21 be said. Has anybody else gone right through the
22 record and found something that you haven't told us,
23 Major Blakeney?

24 MR. BLAKENEY: I don't know. I went through
25 as much of the record as I could between a quarter of

1 three and three o'clock. That is all I know on
2 that subject.

3 THE PRESIDENT: Mr. Tavenner.

4 MR. TAVENNER: If the Tribunal please, in
5 regard to the incident mentioned by counsel where
6 the witness TANAKA was produced by the defense, the
7 question there raised by Mr. Freeman was not directed
8 at the possibility of impeaching the testimony in the
9 affidavit of the witness then being presented; so
10 that this did not arise on that occasion.

11 THE PRESIDENT: That is the only occasion.

12 MR. TAVVENER: What counsel did state on
13 that occasion was that he did not desire to be bound
14 by the testimony of this witness because he expected
15 to attack the credibility of the witness at a later
16 date, the witness having previously testified at
17 length in behalf of the prosecution. Counsel merely
18 did not join in calling that witness. That was the
19 only question involved there.

20
21 THE PRESIDENT: Nor did he cross-examine
22 or claim to do so, if I recollect rightly.
23
24
25

1 MR. TAVENNER: There was nothing in that
2 witness' testimony as then being offered that he was
3 attempting to attack. The question now being pre-
4 sented was not involved at all in the inquiry made
5 with regard to the general opening statement by the
6 defense. Neither I nor my associates can recall any
7 instance in which the question has arisen.

8 The rules which were adopted by the Tribunal
9 were adopted pursuant to agreement between the defense
10 and the prosecution, and your Honor made it perfectly
11 clear that they were rules pursuant to agreement
12 between counsel and that the Tribunal would try them
13 out and if necessary change them. So in no sense, we
14 contend, is the Tribunal bound in any way by either
15 rules or previous decision, as far as we know, on this
16 question.

17 Now, there will be nothing saved in time by
18 the defense postponing testimony of this type to the
19 individual phase -- I mean, of course, to state that
20 there will be nothing lost in time. It is a spurious
21 argument to contend that each of the accused would have
22 to call the same witness and prove the same thing. If
23 the testimony is offered once, it can either be
24 adopted by an accused or rejected when he takes the
25 stand in a very simple manner. If the Tribunal is to

begin to hear evidence upon which there is a sharp
1 conflict between the accused, the general phases will
2 never end. I think for the prosecution's objection
3 to be sustained would shorten the general phase of
4 the case.

5 MR. BLAKENEY: May I say a word in reply,
6 your Honor?

7 THE PRESIDENT: Yes, Major Blakeney.
8
9 MR. BLAKENEY: Mr. Tavenner's argument about
10 lengthening the general phases indefinitely is, of
11 course, wholly specious. We are almost at the end
12 of the general phases and this is, according to him,
13 the second time that the matter has ever come up;
14 and so far as concerns any evidence that I am familiar
15 with it is the last time that it will come up, although
16 that is not a promise on my part.

17 Now, if it is the simple matter that
18 Mr. Tavenner says for evidence introduced in the defense
19 of an individual to be adopted or dissented from by
20 other individuals, it is equally simple now, and the
21 record will be utterly and unequivocally clear as to
22 who is and who is not disassociating himself from that
23 evidence.

24
25 In connection with Mr. Tavenner's statement of
what point was involved in the case of the witness

1 TANAKA, I merely say again without reading it again
2 that the record, on page 22,713, shows precisely the
3 case of reservation which we have here.

4 I understand that Mr. Levin would like to
5 say something concerning his clients' position in
6 relation to this witness.

7 THE PRESIDENT: Mr. Levin.

8 MR. LEVIN: Mr. President: I did not join
9 Mr. Brannon in his statement on behalf of my clients
10 SUZUKI and KAYA, although our position is the same
11 with reference to a portion of this affidavit as his
12 position, or, rather, the position of those whom he
13 represents. And while I am in thorough agreement
14 with everything that Mr. Blakeney stated, I want to
15 add further that the reason I did not make any state-
16 ment was because, under the rules, each defense counsel
17 had a right to examine directly or to cross-examine;
18 and having the right to cross-examine indicated, at
19 least by implication, that there was a disagreement
20 with either the testimony given by affidavit or given
21 orally by the witness. So it was our position that by
22 stating the dissent, either before the affidavit was
23 read and preserving the right to contradict the affi-
24 davit subsequently by oral testimony, or by cross-
25 examining the witness, there was a sufficient indication

1 of a disagreement with the statement or evidence given
2 by the witness; and I joined in those views.

3 THE PRESIDENT: The majority of the Tribunal
4 think that as this affidavit is contested by some of
5 the accused, it should not be read in the general
6 phase. Therefore, the objection is sustained. It
7 may be read on behalf of those individuals who support
8 it, subject, of course, to other objections that are
9 open.

10 Captain Brooks.

11 MR. BROOKS: In view of the Court's decision
12 just announced, I would like to ask permission to put
13 myself clear on the record that I did not think that
14 was the understanding we had had when these rules were
15 drafted and from the previous rulings when this point
16 had been brought up on the opening statements, and
17 there are certain affidavits and pieces of evidence
18 on the record which I do not agree are binding upon
19 my defendants and I want to go back and point those
20 out to the Court at a later time. There has been a
21 small percentage of evidence that has been inconsistent.
22 Sometimes it has been, as I have assumed, from the
23 period of time that has elapsed, making the witness'
24 memory fail him on certain points, but I thought it
25 would be cleared up later.

1 THE PRESIDENT: You must stand or fall with
2 the transcript, Mr. Brooks. There is no reason for
3 you to point out your position.

4 MR. BROOKS: Except that we were practically
5 at the end of the case and when a rule is coming into
6 effect which I have not understood and which, in
7 justice, if it had been announced at the early part
8 of this case, I would have made a lot of statements
9 and objections that would have taken a lot of time
10 in this court--

11 THE PRESIDENT: Just consider this, Captain
12 Brooks: You heard every word that was said in this
13 court affecting your client. If anything was said
14 prejudicial to your client or clients, did you cross-
15 examine?

16 MR. BROOKS: On occasion I have found the
17 witness -- I have talked with him before he was put
18 on the stand and found he would not change his state-
19 ment on that point, and there was no necessity of
20 cross-examining. I do not know whether I cross-
21 examined or not.

22 THE PRESIDENT: But on your own statement
23 you have not been prejudiced; you have no grievance.
24 You are making a formal, unnecessary protest and
25 wasting out time. The debate is closed.

1 MR. BROOKS: May I be heard in chambers on
2 this?

3 THE PRESIDENT: We will adjourn until half-
4 past nine tomorrow morning.

5 (Whereupon, at 1600, an adjournment
6 was taken until Friday, 15 August 1947, at
7 0930.)

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NOTE:

The attached pages are corrected
pages and should be substituted for the
corresponding pages in the record.

WITNESSES

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known to the Japanese with respect to the arrangement
1 made at Rabaul, Port Moresby, Port Darwin, Balikpapan,
2 Borneo, and Singapore. It has a direct bearing.
3

Again, I must say that I fail to see how the
4 prosecution could seriously contend that this is not
5 material to the issue raised by them as to whether or
6 not this was an unprovoked war.
7

THE PRESIDENT: Suppose Australia made those
8 strips in those parts of her own territory, we would
9 hardly be asked to take it into consideration.
10

MR. LOGAN: But, that is not the case before
11 us, your Honor. Here is an action that was taken
12 thousands and thousands of miles, close to Japan.
13 If Japan had done that, it probably would have been
14 considered by the prosecution as an act of aggressive
15 war.
16

THE PRESIDENT: I understand from my col-
17 league, who examined this carefully while I was dis-
18 cussing it with you, that the first part relates to
19 Lease-Lend and the second part covers material already
20 rejected.
21

The objection is sustained and the document
22 rejected by a majority.
23

We will recess for fifteen minutes.
24

25 (Whereupon, at 1045, a recess was

1 if the Tribunal please, an exposition of these
2 various army plans, and this shows that steps were
3 being taken at this time to put them into effect on
4 November 28, 1941. They have a direct bearing on
5 the question which will be for the determination of
6 the Court as to whether or not this was an aggressive
7 war.

8 THE PRESIDENT: We understand that you are
9 tendering these to combat the charge of a treacherous
10 attack.

11 MR. LOGAN: That is one of the minor issues,
12 reasons, which I am attacking, not one of the major
13 ones.

14 THE PRESIDENT: By a majority the Court
15 sustains the objection and rejects the document.

16 MR. LOGAN: I shall omit defense document
17 1500-U-2.

18 I shall omit defense document 1500-S-2 as
19 cumulative, showing America was ready for hostilities
20 following the note.

21 I shall omit defense document 1500-T-2 on
22 the same ground.

23 We offer in evidence defense document 1500-W-3.
24 This is a top secret dispatch dated November 28, 1941,
25 from Chief of Naval Operations to commanders

1 States to discontinue the negotiations for a time,
2 and will be shown to have been the turning-point, the
3 point at which the United States, losing interest
4 in the negotiations, seemed to have decided that
5 war was but a matter of time. An immediate sequel
6 to the Indo-China move was the American, British
7 and Dutch freezing of Japanese assets and rupture
8 of commercial relations with Japan; but the evidence
9 will show that that move had been under contemplation
10 by the United States since some weeks before.

11 On 16-18 July the second KONO ministry
12 resigned and the third was formed. This change of
13 government will be shown to have been directly and
14 wholly brought about by the necessities of reaching
15 an agreement with the United States -- the negotia-
16 tions were not progressing, and it was felt that a
17 change of foreign ministers was required to further
18 them. The new cabinet continued with the attempt
19 to bring about an agreement. Not only were new pro-
20 posals offered, but Premier KONO, taking up and
21 elaborating a suggestion contained in the original
22 draft proposal, urged that a meeting be held between
23 him and President Roosevelt for a tete a tete from
24 which there was every reason to expect much. To
25 this suggestion -- which the premier had been able

1 to make on some conditions proposed by the Army --
2 to this suggestion the American authorities at first
3 responded with some enthusiasm, but they later imposed
4 so many conditions for the meeting that it could never
5 be realized.

6 By August the pressure of the Army author-
7 ities upon the government for a quick settlement of
8 the Japanese-American relations had become too power-
9 ful to be any longer resisted. The United States, it
10 was argued, was insincere in negotiating; she had
11 no real intention of agreeing; if Japan yielded on
12 the points at issue then, the United States would
13 impose further measures of oppression; and it was
14 useless longer to negotiate, and better to go to war
15 in defense of the nation than to yield. This position
16 was opposed by the Government, which urged that fur-
17 ther concessions could and should be made to preserve
18 peace; the Navy at this time was reluctant to see the
19 nation embarked upon a war, but entrusted the decision
20 to the premier rather than openly opposing the Army's
21 stand. At the Imperial Conference of 6 September
22 the decision was arrived at that unless a settlement
23 by diplomacy could be reached by mid-October war
24 would be resolved upon.

25 The government redoubled its efforts;

Premier KONO urged anew the promise held out by the
1 meeting with the President; a new proposal, embody-
2 ing the maximum concession which could be agreed upon,
3 was presented to the United States; Foreign Minister
4 TOYADA began consultations in Tokyo with the Amer-
5 ican and British Ambassadors to insure that every
6 possible effort should be made. Despite all, the
7 negotiations did not prosper; the United States
8 remained unconciliatory and adamant and, as reported
9 by Ambassador NOMURA, seemed determined on maintain-
10 ing its stand even if it meant war. The Army renew-
11 ed its insistence that diplomacy, having little pros-
12 pect of success, must give place to arms; the oppos-
13 ing points of view could not be reconciled; and on
14 16 October the third KONO government, like its
15 predecessor, fell, a victim of the Japanese-American
16 question.

The emergency of the successor cabinet,
18 that of General TOJO, was widely regarded as evidence
19 of the victory of extremist opinion in Japan. That,
20 on the contrary, the new premier was charged to and
21 did immediately upon taking office undertake reexam-
22 ination of the whole question of Japanese-American
23 relations, 'wiping the slate clean' of the Imperial
24 Conference decision of 6 September which had estab-

lished the limit beyond which Japan could not go
1 by way of concession toward America, will be shown
2 by the evidence to be adduced. The highest officials
3 of government and high command plunged at once into
4 a round of Liaison Conferences at which the whole
5 subject was minutely restudied with a view of find-
6 ing the utmost concessions which could be offered.
7 It having been understood from Ambassador NOMURA'S
8 reports that a basis for agreement concerning the
9 other two large questions had been obtained, the
10 Liaison Conference devoted the most of its consid-
11 eration to the problem of withdrawal of troops from
12 China, the Army's intransigence in connection with
13 which had caused the fall of the KONOUE government
14 and had brought the negotiations in Washington to a
15 stalemate.

17 During this period the position of the Army
18 high command remained that which it had been before:
19 That there was but a faint prospect of successful
20 conclusion of the negotiations, and that Japan would
21 therefore eventually have to go to war. But while
22 negotiations dragged out interminably, so it was
23 argued, Japan was being subjected to gradual exhaustion
24 of resources as the economic warfare of the allied
25 powers began to take full effect; the nation was

1 losing its power to fight; and hostilities should
2 therefore commence while Japanese fighting power
3 was still relatively strong as compared with that of
4 the potential enemy. The viewpoint of the Naval
5 General Staff had come to be that if war was to be
6 inevitable, it should be determined upon promptly.
7 But the result was that agreement of the high command
8 was secured to offer further concessions and to con-
9 tinue diplomatic efforts; but with the provisos
10 that precautionary military preparations should go
11 on simultaneously, and that if diplomacy failed to
12 achieve results, a resolution for war should be taken.

13 The evidence will be that at the Liaison
14 Conference of 1-2 November agreement was reached
15 upon the presentation to the United States, in
16 obedience to the policy so established, of two alter-
17 native proposals: One in general form, embodying such
18 points of understanding as had theretofore been reach-
19 ed, together with the new concessions: The other in
20 form of a modus vivendi, to be offered, in the event
21 of American unreceptiveness to the general proposal,
22 as a means of relaxing the tension to create a favor-
23 able atmosphere for continuance of negotiations.
24 These proposals were approved at an Imperial Confer-
25 ence on 5 November, and Ambassador NOMURA was immed-

1 iately instructed to commence negotiations on that
2 basis. Ambassador KURUSU was dispatched at the same
3 time, in accordance with a long-standing request of
4 Ambassador NOMURA, to assist.

5 The first of these proposals -- "Proposal
6 'A'", as it was designated -- was duly presented to
7 Secretary Hull and the President. At first, the evid-
8 ence will show, prospects from it seemed good; but
9 gradually the United States seemed to lose interest;
10 it made light of the concessions agreed to with great
11 travail by Japan, it questioned the sincerity of Japan.
12 There seeming to be no prospect of success in that
13 direction, the Liaison Conference authorized the
14 presentation of the modus vivendi, Proposal "B".
15 It was handed over on 20 November. Both before and
16 after that date, the evidence will show, a variety
17 of efforts had been made by the Japanese represent-
18 atives to meet the American position on the points
19 at issue. Meanwhile, under the limitations of the
20 decision previously taken, and in face of the obvious-
21 ly mounting threat to the national existence, time
22 was running out.

24 Receipt from the United States of the mem-
25 orandum of 26 November will be shown virtually to
 have extinguished hope of preserving peace. All

participants in the Liaison Conference were in agreement at last, that unless the United States could be persuaded to reconsider, Japan must resort to war in self-defense. Military preparations had, of course, been proceeding in accordance with the 25 November decision; but those preparations had been subject to countermand at any time, that an agreement might be reached, and that even after the actual decision for war was taken at the Imperial Conference of 1 December.

Liaison Conferences following the decision upon war considered and settled the manner of giving notice before the commencement of hostilities and the content of the first notification. Evidence will be tendered of the decision that before the opening of hostilities the United States should be notified, and that a note breaking off the current negotiations should be sent. Preparations were made accordingly and the final note was ordered delivered in Washington at 1 P.M. of 7 December. The note was dispatched to Washington and was there received in good time, but owing to delays there in the mechanical processes incident to its preparation, delivery was delayed until more than an hour after the appointed time, and consequently until after the attack on Pearl Harbor and other points in the Pacific. All concern-

ed in the government and the Liaison Conference intended,
1 when the matter of notice was decided, that notification
2 should precede any attacks.

Evidence will be introduced to show that
3 the delay in delivery of the President's message of
4 6 December to the Emperor was without the knowledge
5 or authorization of the Foreign Ministry or the
6 cabinet, but that, on the contrary, the Foreign
7 Ministry made every effort to expedite its delivery.

The evidence will show that the members
8 of the Liaison Conference charged with responsibility
9 for decision of the question of war or peace considered
10 the final note dispatched to the United States
11 to be in the circumstances then prevailing tantamount
12 to a declaration of war, and a substantial compliance
13 with the convention governing commencement of hostilities.
14 That the responsible authorities of the United
15 States concurred in that opinion; that the United
16 States was amply warned of the coming of war, and
17 in fact had anticipated that the delivery of the
18 note of November 26 would result in rupture of the
19 negotiations and of peaceful relations; and, lastly,
20 that the highest military authorities of the United
21 States expected the war at the hour that it came,
22 will be shown by an abundance of evidence.

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 MR. LOGAN: We now offer in evidence defense
4 document 1500-R-5, which is a memorandum for Admiral
5 Stark from General George C. Marshall, Chief of
6 Staff, dated September 12, 1941, regarding military
7 aid for islands in the South Seas prior to Pearl
8 Harbor.

9 THE PRESIDENT: Mr. Tavenner.

10 MR. TAVERNER: If the Tribunal please --

11 MR. LOGAN: I might say that the previous
12 documents showing troop movements, and so forth,
13 have been introduced and accepted by the Tribunal.

14 THE PRESIDENT: Mr. Tavenner.

15 MR. TAVERNER: If the Tribunal please, the
16 prosecution views the transfer of troops to the
17 Philippines as not being material and objects on that
18 ground.

19 THE PRESIDENT: Purely defensive.

20 By a majority the objection is sustained and
21 the document rejected.

22 MR. LOGAN: I didn't have an opportunity to
23 answer. I might say there is nothing in this document
24 to show whether it is offensive or defensive.

25 THE PRESIDENT: It is too late now, Mr. Logan.

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AFTERNOON SESSION

The Tribunal met, pursuant to recess,
at 1330.

MARSHALL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Mr. Blakeney.

MR. BLAKENEY: In connection with the
question raised by the prosecution before the recess,
there seems to be a considerable difference of opin-
ion among defense counsel, particularly in view of the
fact that any ruling now made on this question would
be presumed to have a retroactive effect in connectio-
with much evidence already received. It is therefore
felt that full consideration should be given to
preparation of an argument on the question, which we
are not prepared to make at this time. I shall there-
fore request leave of the Tribunal to withdraw the
tender of this document for the time being.

THE PRESIDENT: We give you leave to with-
draw the document.

MR. BLAKENEY: Another document on this point
touches upon the influence on the Japanese-American
negotiations themselves of the independence of the
military high command: An excerpt from the memoirs

25,669-1/2

1 of Prince KONOYE as published in the record of the
2 proceedings of the Joint Committee of the Congress of
3 the United States on the investigation of the Pearl
4 Harbor attack. I tender for identification Volume 20

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1 listed in the Japanese Annex and Explanation
2 he did not believe that difficulties which might
3 arise over these two points would be such as to
4 prevent an agreement between China and Japan.

5 "The Secretary referred briefly to the
6 reciprocal feature of our suggested redraft of
7 Section V of the Japanese proposal, which relates
8 to the economic activity of the Southwest Pacific
9 area, and expressed the hope that subsequently
10 other countries could be brought in. He alluded in
11 this connection to the fact that the benefits of our
12 trade program in South America are enjoyed by all
13 nations."

14 The oral statement handed by Secretary
15 Hull to Ambassador NOMURA on 16 May is offered in
16 evidence as defense document 1400-E-6.
17

18 THE PRESIDENT: Admitted on the usual terms.

19 THE CLERK: Defense Document 1400-E-6 will
20 receive Exhibit Number 2874.
21

22 (Whereupon, the document above
23 referred to was marked defense exhibit
24 No. 2874 and received in evidence.)
25

MAJOR BLAKENEY: The oral statement is as

follows:

"Informal and Unofficial Oral Statement

25,715-1/2

1 Handed by the Secretary of State to the Japanese
2 Ambassador (NOMURA) on May 16, 1941.

3 "There has not yet been time to study care-

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14 August / 44